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No.

In The
SUPREME COURT OF THE UNITED STATES
October Term, 1996

In Re: DAVID GOLIA-PALADIN

Petitioner,

Applicant to the North Carolina Bar by Comity

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF NORTH CAROLINA

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December 17, 1996

106 pp

QUESTIONS PRESENTED

In this denial of admission to the North Carolina Bar, the Petitioner was denied admission on the ground that he failed to meet the bar's standard of character and general fitness. The procedure set forth by the state of North Carolina and the rules promulgated to determine an applicant's fitness are insufficient to protect an applicant's right to a fair hearing and to fundamental fairness.

This case appears to be one of first impression in raising the following issues under the 14th Amendment of the Constitution of the United States:

I. Whether an attorney who is a defendant in a case should have the same rights to a defense under the United States Constitution as any other litigant.

During bar admission proceedings the North Carolina bar examiners and North Carolina Supreme Court violated the Petitioner-applicant's civil rights under the Equal Protection and Due Process clauses of the 14th Amendment of the United States Constitution by holding an attorney as litigant to a different standard than a non-attorney litigant. This action has created in North Carolina a class of litigant obligations separate from that of the ordinary citizen when an attorney is a defendant in a civil suit, and continues to underscore the problems concerning the lack of any current subjective national standards for good moral fitness.

II. Whether bar admission procedures must comport with due process by being based on rules that set forth clear and objective standards with regard to moral fitness, notice, materiality, standards of proof, and impartiality.

The rules promulgated by the North Carolina bar examiners and by the North Carolina Supreme Court violated the Petitioner-applicant's rights under Due Process of the 14th Amendment of the United States Constitution because the vagueness of the North Carolina rules fails to adequately define "good moral fitness," which is used as a standard for admission to the bar of all states. Further, these rules invite abuse and outrageous results by failing to provide for an unbiased trier of fact, for proper notice, for any standard of materiality, and for any meaningful, objective,

evidentiary standard of proof. Finally, the subjective implementation of these rules is not rationally related to any consistent predictive factors of future conduct.

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF NORTH CAROLINA

Petitioner David Golia-Paladin respectfully petitions for a writ of certiorari to review the judgment and opinion of the Supreme Court of North Carolina.

OPINIONS BELOW

The opinion of the Supreme Court of North Carolina is reported at---N.C.---, ---S.E.2d---and is reprinted as Appendix J. The order of the North Carolina law examiners is unpublished and reprinted as Appendix E.

JURISDICTION

The judgment of the Supreme Court of North Carolina was entered July 31, 1996. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1257(a).

CONSTITUTIONAL PROVISIONS, ETHICAL CONSIDERATIONS, AND ADMISSION RULES INVOLVED

The constitution of the United States provides in pertinent part:

Amendment XIV, section 1

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Disciplinary Rules of the Model Code of Professional Responsibility provide in pertinent part:

Disciplinary Rule 1-101

Maintaining Integrity and Competence of the Legal Profession

(A) A lawyer is subject to discipline if he has made a materially false statement in, or if he has deliberately failed to disclose a material fact requested in connection with his application for admission to the bar.

(B) A lawyer shall not further the application for admission to the bar of another person known by him to be unqualified in respect to character, education, or other relevant attribute.

The Model Rules of Professional Conduct provide in pertinent part:

Rule 3.3 Candor Toward The Tribunal:

Comment [3], Misleading Legal Argument

Legal argument based on a knowingly false representation of law constitutes dishonesty toward the tribunal. A lawyer is not required to make a disinterested exposition of the law...

Rule 4.1 Truthfulness In Statements To Others:

Comment [1], Misrepresentation

A lawyer is required to be truthful when dealing with others on a client's behalf, but generally has no affirmative duty to inform an opposing party of relevant facts.

Rule 8.1 Bar Admission and Disciplinary Matters:

An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter shall not:

(a) knowingly make a false statement of material fact; or

(b) fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admission or disciplinary authority, except that this rule does not require disclosure of information otherwise protected by Rule 1.6.

The rules governing admission to the practice of law in the state of North Carolina provide in pertinent part:

Section .0103

The Board also employs an executive secretary to enable the Board to perform its duties promptly and properly. The executive secretary, in addition to performing the administrative functions of the positions, may act as attorney for the Board.

Section .0502

Any attorney at law duly admitted to practice in another state, or territory of the United States, or the District of Columbia, immigrating or who has heretofore immigrated to North Carolina from such jurisdiction, upon written application may, in the discretion of the Board, be licensed to practice law in the State of North Carolina without written examination provided each such applicant shall: (1) File with the Secretary, upon such forms as may be supplied by the Board, a typed application in duplicate which will be considered by the Board after at least six (6) months from the date of filing; the application requires: (a) That an applicant supply full and complete information in regard to his background, including family, past residences, education, military, employment, credit status, whether he has been a party to any disciplinary or legal proceedings, mental illness, references, the nature of the applicant's practice of law, and familiarity with the Code of Professional Responsibility as Promulgated by the North Carolina State Bar; (b) That the applicant furnish the following documentation: i. Certificates of Moral Character from four (4) attorneys; ii. A recent photograph; iii. Two (2) sets of clear fingerprints; iv. A certification of the Court of Last Resort from the jurisdiction from which the applicant is applying; v. Transcripts

from the applicant's undergraduate and graduate schools; vi. A copy of all applications for admission to the practice of law that he has filed with any state, territory, or the District of Columbia; vii. A certificate of admission to the bar of any state, territory, or the District of Columbia; viii. A certificate from the proper court or body of every state in which the applicant is licensed therein that he is in good standing and not under pending charges of misconduct...(3) Prove to the satisfaction of the Board that the applicant is duly licensed to practice law in a state, or territory of the United States, or the District of Columbia having comity with North Carolina and that in such state, or territory of the United States, or the District of Columbia, while so licensed therein, the applicant has been for at least four out of the last six years, immediately preceding the filing of this application with the Secretary, actively and substantially engaged in the practice of law. Practice of law for the purposes of this rule when conducted pursuant to a license granted by another jurisdiction shall include: [various listings none of which refer to "residency" or "residence."]...(6) Be of good moral character and have satisfied the requirements of Section .0600 of this Chapter...

Section .0601

Every applicant shall have the burden of proving that the applicant possesses the qualifications of character and general fitness requisite for an attorney and counselor-at-law and is possessed of good moral character and is entitled to the high regard and confidence of the public.

Section .0603

No one shall be licensed to practice law...(1) who fails to disclose fully to the Board, whether requested to do so or not, the facts relating to any disciplinary proceedings...(2) who fails to disclose fully to the Board, whether requested to do so or not, any and all facts relating to any civil or criminal proceedings, charges or investigations involving the applicant...

Section .0801

Any person may protest the application of any applicant to be admitted to the practice of law either by examination or by comity.

Section .0803

The secretary shall notify immediately the applicant of the protest and of the charges therein made; and the applicant thereupon may file with the secretary a written withdrawal as a candidate for admission to the practice of law...

Section .0805

Nothing herein contained shall prevent the Board on its own motion from refusing to issue a license to practice law until the Board has been fully satisfied as to the moral character and general fitness of the applicant as provided by Section .0600 of this Chapter.

Section .1202

The chairman will schedule the hearings before the Board or Panel and such hearings will be scheduled by the issuance of a notice of hearing mailed to the applicant or the applicant's attorney within a reasonable time before the date of the hearing.

Section .1203

(2) The Panel will make a determination as to the applicant's eligibility to stand the written bar examination or to be licensed by comity. The Panel may grant the application, deny the application, or refer it to the full Board for a de novo hearing. The applicant will be notified in writing of the Panel's determination. In the event of an adverse determination by the Panel, the applicant may request a hearing de novo before the full Board by giving written notice to the secretary at the offices of the Board within ten (10) days following receipt of the Panel's determination...

Section .1403

Within sixty days after receipt of the notice of appeal, and after the applicant has paid the cost of preparing the record, the Secretary shall prepare, certify, and file with the clerk of the Superior Court of Wake County the record of the case, comprising: (1) the application and supporting documents or papers filed by the applicant with the Board;...

PRELIMINARY STATEMENT

Unlike most other "good moral fitness" cases to come before this Honorable Court, or before any other state supreme court, this case does not concern itself with financial improprieties or criminal convictions or political party affiliations. Any connection with any common understanding of the meaning of "morality" is questioned by this case. It is, indeed, a case of first impression, where an aggregate of three amendments to the applicant's application for admission resulted in denied admission.

Petitioner David Golia-Paladin, is an attorney duly admitted to the bar of the State of New York and in February, 1991 submitted an application for admission to the bar of the State of North Carolina by comity.

Twenty months later, in September of 1992, a "Panel" hearing was held regarding the Petitioner's admission to the North Carolina bar. The panel consisted of a chairman and two other board members. The panel ruled (App.A) that petitioner did not meet all the requirements of Rule (*sic*) .0502. (App.B)

The panel did not specify in what way the requirements were not met, nor did any member of the panel initiate any questions about any of the issues subsequently raised in the *de novo* full board hearing on which the full board based its decision. On filing for the *de novo* hearing, a general notice (App.C) was given that Petitioner would be questioned about his practice and about the New York zoning case (App.D) in which Petitioner was the defendant.

A *de novo* hearing was requested pursuant to Section .1203, and held in October, 1992 before the full board. Petitioner was represented by counsel, and the board was represented by the attorney general of the state of North Carolina.

In January, 1993 the North Carolina Board of Law Examiners (the "board") issued its order (App.E) denying Petitioner's application for admission on three "conclusions": 1) that he made untruthful and misleading material statements in documents filed in the New York zoning case (App.D); 2) that he made untruthful and misleading statements to the board compounding his untruthful and misleading statements

concerning the New York zoning case; and 3) that he failed to satisfy their standards of good moral character.

In support of the above conclusions the board made the following "findings": 1) that he lacked fairness and candor to the board in that he willfully failed to fully disclose within the scope of Section .0603 the following two material matters: (a) the number of times he took the California bar exam, (App.F), and (b) "information or documents" on a federal civil rights in New York case in which Petitioner is a plaintiff, (App.G); 2) that he intentionally made misrepresentations to a New York court in a New York zoning case in which Petitioner was a defendant (App.D); and 3) that Petitioner was deceitful to the board by amending the residency listing (App.H) on his application from concurrent New York/North Carolina residency to only North Carolina during the pendency of the New York zoning lawsuit and by insisting the answer in the New York lawsuit was truthful and proper.

Based on these four findings, the board found that Petitioner failed to meet their standard of "good moral fitness."

Less than a month after North Carolina's negative finding, California issued a positive character finding holding in February of 1993 that Petitioner had met the California standard of good moral fitness (App.I).

In July of 1996 the North Carolina board's decision was unanimously upheld in its entirety by the Supreme Court of North Carolina (App.J)

STATEMENT OF THE CASE

The Petitioner, in his comity application for admission to the North Carolina bar and at the subsequent *de novo* full board hearing answered questions regarding whether he has taken the bar in any other state and if so, where and when; and whether he was involved in any other lawsuits.

The Petitioner set forth that he had signed up for the California bar an unknown number of times since his graduation from law school, and had actually taken it somewhat fewer times. In his application he stated:

"So how many times have I signed up for the New York exam? Three to the best of my memory. As to dates I have no idea. The same is true for the California exam. Since I first signed up for it 17 years ago, to be on the safe side, I would have to guess I have signed up for it at least 15 or 16 times, and taken it maybe ten or twelve times more or less.

"If information relating to this is critical to the North Carolina examiners, I invite you to make inquiry. I should point out that a copy of the new California long form that I recently filled out is attached, and that I likely will sit again for the exam this winter. Please let me know if this answer to this particular question is insufficient to satisfy your needs."

Nearly four months after submission, the board's executive secretary (hereinafter also referred to as the "secretary") acknowledged receipt of the application and fee on June 4, 1991, and asked for certain "missing or incomplete" items. All items requested were provided.

On December 19, 1991, again the board's secretary wrote Petitioner's attorney with another list of "missing or incomplete" items, this time also asking about Petitioner's "primary residence." All the items were answered by letter of January 2, 1992, including the statement that, Petitioner "...and his wife reside at the North Carolina address, but because he practices law in New York, he commutes to work in New York and maintains the New York address for this purpose."

Further, the board's secretary stated in the same letter that, "...it is incumbent upon the applicant to provide the Board with the exact dates and locations for any bar examinations taken in other jurisdictions. Each jurisdiction should be written and the information requested." The response to this inquiry was, "Enclosed are copies of a letter to each of the Bar Examiner's committees in New York and California which Mr. Golia-Paladin mailed asking that you be sent a list of dates and places he sat for the Bars in those States."

Uncontroverted testimony was later offered by the Petitioner at the full board hearing as to these facts. He testified that when he received a copy of the dates from California, it was immediately

sent to the board. Yet, the board concluded that Petitioner's above compliance lacked "candor and fairness" to the board.

At the time of his application, Petitioner was married to a North Carolina resident. He also was admitted to practice and maintained an active practice of law in New York. As a result, Petitioner spent part of his time in North Carolina and part of his time in New York. His residency was constantly shifting between the two, though his domicile remained with his then spouse. He therefore listed concurrent residency on the application from the time of his marriage.

Although Petitioner's domicile with his North Carolina spouse never changed for the duration of the marriage, Petitioner's New York residency changed in December of 1987 when village housing inspectors in New York misrepresented to Petitioner who they were for the purpose of gaining access to his property. Petitioner felt grossly violated by this invasion which caused him to return to North Carolina not just as normally planned, but at the time with intent not to return.

In January of 1988, Petitioner was served with a complaint and request for an injunction alleging violation of the local zoning ordinance by maintaining living/sleeping quarters in a "cellar." (A "basement" can be used for living/sleeping quarters because it is defined locally as being high enough to provide fire and rescue access from outside.) All papers relating thereto were thus submitted as part of Petitioner's North Carolina bar application.

In his verified answer to the New York zoning matter the Petitioner's response was to consistently deny any allegation where the plaintiff characterized Petitioner's property in question as a "cellar." "Residence" per se was not an issue except to the extent Petitioner stated that at the time of verification he resided in North Carolina.

The plaintiff in the New York action voluntarily agreed to discontinue the action by stipulation in March of 1988 with an agreement that the basement was a basement, and not a cellar.

On September 24, 1992, the North Carolina three member hearing panel order denying admission without opinion was entered.

On about October 9, 1992, Petitioner was notified of an October 22, 1992 *de novo* hearing date, and that,

> "...The applicant should be prepared to substantiate that he has been duly licensed to practice law in a state, territory of the United States, or the District of Columbia having comity with North Carolina and that in such state, or territory of the United States, or the District of Columbia, he has been for at least four out of the last six years, actively and substantially, engaged in the practice of law.
>
> "The applicant will also be questioned about the litigation entitled Anne Galante, et al v. David Golia Paladin." (The New York zoning case.)

At the time of the *de novo* board hearing, Petitioner filed an amendment to the application on the board's special "Amendment to Application" form, on which he excepted the period of 12/17/87 to 3/14/88 from concurrent residency.

With regard to the New York zoning case, the board decided two things: one was that with respect to the New York court, the Petitioner acted in an unethical manner and displayed "a lack of fairness and candor with the [New York] Court and had the tendency and capacity to deceive"; second, the Board found that Petitioner's filing of a formal amendment was an indication that he lacked candor and fairness with the board, and that his actions demonstrated, "the convenient adoption of a temporary position for self-serving purposes in a legal matter rather than a genuine intention to terminate permanently his New York residence," and that such represented "a lack of fairness and candor with the Board."

At that point, the board went on to say that Petitioner "had been questioned about the lawsuit by the Board's Hearing Panel on September 10, 1992, and afterward he had received the Board's Notice of Hearing dated October 5, 1992, specifically informing the Applicant that he would be questioned about the litigation." Interestingly, the record of the hearing panel was never introduced into evidence, and the three panel members did not question Petitioner about the matter. The panel chairman joked about it in opening the hearing, and that was all that was said about it until at the end of the hearing, when the board's secretary, Fred Parker--who was not a panel member--began

asking questions about "residence" and the New York zoning case.

Finally, the *de novo* board took issue with a case Petitioner has pending as a plaintiff in federal court in New York. Nearly two years had passed from the time the Petitioner put together the application in the fall of 1990 to the time of the hearing in October of 1992. In January of 1992, the board's secretary accepted an update from Petitioner's lawyer on the status of the federal case. In October of 1992 the uncontroverted record reflects that the Petitioner voluntarily and under oath updated the status of the federal case to the board during the hearing.

Nonetheless, the board then took this update by Petitioner, concerning a change in venue and dismissal of certain defendants, and used it to characterize Petitioner's acts as having "willfully failed to provide to the Board material documents within the meaning of question 17 of the application."

Question 17 reads:

> "The following is a complete list of all suits in equity, actions at law, suits in bankruptcy, or other statutory proceedings, matters in probate, lunacy, guardianship, and every other judicial proceedings of every nature and kind, except criminal proceedings, personally or as a member of a professional association or corporation, to which I am or have ever been a party. PLEASE FURNISH copies of the litigation -- bankruptcy, judgments, small claims, etc. and complete the following: [two inch columns under headings listed below]

Defendants Disposition." Date Court Nature of Proceedings Plaintiffs

It is the Petitioner's position, as will be argued further, that the actions of the Board deprived Petitioner of his 14th Amendment rights to due process, fundamental fairness, and equal protection of the law.

The number of times an attorney takes a bar exam is certainly not material. In contrast to the board's position of intentional misrepresentation, the record reflects that Petitioner was unsure of the specifics of the information that in some cases was

decades old. The record in fact reflects that this additional information was obtained directly after the December 1991 instructions of the board's executive secretary and submitted shortly thereafter.

Further, the board's finding of lack of candor based on the Petitioner's failure to provide them with additional "information or documents" in the federal civil case in New York is also a violation of due process and fundamental fairness in that Petitioner did provide such information both during the twenty month wait for a hearing and subsequently at the hearing itself in full compliance with Section .0603 which simply requests no more than disclosure of "all facts relating" thereto.

Most importantly, the board's position with the New York zoning case was that Petitioner misrepresented and mislead the New York court in his answer when he denied that he was residing in New York while he was residing in North Carolina during the pendency of the case. The board also seemed unable or unwilling to understand that the real issue in the New York case was whether the "living quarters" in question was located in an illegal "cellar" or in a legal "basement." Thus the board's position is inconsistent both with the facts of the case and with the Petitioner's right as a defendant-litigant to properly and adequately defend himself with a legitimate defense with which the then plaintiffs soon agreed by their voluntary discontinuance of the matter.

REASONS FOR GRANTING THE WRIT

First, never has this Court addressed the obligations and rights of an attorney when that attorney is a litigant, and never has a state bar used the issue to bar an admission.

The North Carolina Board of Law Examiners, hereinafter referred to as the "board," acts as an administrative arm of the Supreme Court of North Carolina in certifying applicants for admission to the North Carolina bar.

The board, as affirmed by the North Carolina Supreme Court, by ruling against the Petitioner in this matter, has squarely set itself against complying with rules already set by the Supreme Court of the United States with regard to due process in bar admissions. More importantly, the issue of the obligations of an attorney as litigant has never before been raised before the U.S.

Supreme Court, and it appears that it has never been raised in any court of this country.

Given the number of attorneys in this country, given the increasing mobility of the bar, and given the exponential increase in litigation, more and more attorneys are finding themselves as litigants, and then later they find themselves under scrutiny by other states where they may wish to practice. It behooves this Court to give direction and guidance both to bar admission personnel and to the bar generally, as to just what an attorney's constitutional rights and ethical obligations are when he or she is personally involved as a party to litigation.

In addition, never has a state bar gone so far to deny admission based on a string of conclusions unsupported by evidence other than their own subjective statements about charges never raised, issues never defined, and materiality never quantified.

This entire matter is in need of constitutional review because the instant equal protection and due process violations are the products of the board's flawed reasoning and failure to adhere to the current series of Supreme Court cases directly on point.

Until this Court reviews the actions of the Bar Examiners in North Carolina which gave rise to these Constitutional violations, a continued arbitrary erosion of these type of fundamental rights can be expected.

Simply put, the board here has failed to enunciate a rational basis for its decision based on the evidence presented. This was possible because of a lack of articulable standards which should govern the decision making process. As a result, any applicant to the North Carolina Bar cannot intelligently anticipate opposition to or potential questions as to his or her fitness to be admitted. This lack of standards has been endorsed by the North Carolina Supreme Court.

And finally, the North Carolina Bar Examiners and the North Carolina Supreme Court have permitted themselves to impose upon attorneys who wish to be admitted to practice in North Carolina a separate class of obligations which infringe on their rights as citizens to defend themselves in civil actions brought against them. This is a clear violation of Equal Protection.

I. WHEN AN ATTORNEY IS A DEFENDANT IN A CASE, HE OR SHE SHOULD HAVE THE SAME EQUAL PROTECTION RIGHTS TO A DEFENSE, UNDER THE UNITED STATES CONSTITUTION, AS ANY OTHER LITIGANT. AND, WHEN AN ATTORNEY ON THE SAME DISCLOSURE HAS BEEN FOUND TO LACK MORAL FITNESS IN ONE STATE BUT LESS THAN ONE MONTH LATER IS FOUND MORALLY FIT IN ANOTHER, SERIOUS QUESTIONS ABOUT FAIRNESS AND EQUAL PROTECTION ARE RAISED.

RIGHT TO A DEFENSE

It is the position of the Petitioner that the North Carolina Board of Law Examiners has placed an undue burden on the rights of lawyers to defend themselves. They have done this by denying admission to the North Carolina bar based in part on representations made in a lawsuit in which Petitioner was a defendant in 1988. This is a clear violation of Petitioner's right to Equal Protection of the law guaranteed by Amendment Fourteen of the United States Constitution.

The gravamen of Galante v. Paladin, the New York zoning case, was the allegation that Petitioner had a "cellar" apartment which was used as living and sleeping quarters in violation of the local village zoning ordinances.

The North Carolina Bar application asked applicants to list all temporary and permanent residences. Separate spaces were provided for each residence. The Petitioner indicated on his application that he was a resident of North Carolina for the period "April, 1985 to Present" and in a separate space that he was a resident of New York for the period of "June, 1978 to Present." Clearly, there was an overlap from April, 1985 to present. His domicile was in North Carolina with his wife. He continued to keep an office in New York and continued to practice there and would return to New York when he had to make court appearances.

In December, 1987, Petitioner left New York with no intention of returning. He remained out of that state through March of 1988. This was due to the invasion of his privacy by village housing inspectors who misrepresented to the Petitioner who they were for the purpose of gaining access to his property. Petitioner was angry with what had just happened, and at that

time when he left New York he intended to permanently remain away. (Even though subsequently in March of 1988 Petitioner's attorney informed him the matter was being dropped.)

In January, 1988, while Petitioner was still in North Carolina, a complaint and order to show cause for an injunction were served at Petitioner's house in New York. One of Petitioner's tenants told him of the service of the legal papers.

Petitioner engaged the services of an attorney and filed an answer to the complaint and the order to show cause in which he denied the allegation that he maintained a "cellar" apartment for use as living and sleeping quarters since it was Petitioner's position that the apartment was in a "basement"(which is legal).

Further, Petitioner did state in his February, 1988 affirmation in opposition to the order to show cause that he did not reside at the premises, but that he resided in Chapel Hill, North Carolina. That was where the Petitioner was for the previous two months and was where the papers were dated and notarized.

When Petitioner appeared at the board hearing in October, 1992, he filed an amendment to his application stating that he was not a resident of New York from December, 1987 through March, 1988. This was, in fact, true.

Residency, by its very nature, is transitory. When Petitioner was in North Carolina, he was a resident of North Carolina. When Petitioner was in New York, he was a resident of New York.

At the time of the service of the complaint upon Petitioner, he was in residence in North Carolina. At the time of the filing of his answer and affirmation, and later at the time of the discontinuance, he was in residence in North Carolina.

Petitioner's assertions in his complaint and affidavit were true. Petitioner was well within his rights as a litigant to assert this viable defense in the action for an injunction against him.

Furthermore, the action was discontinued by the plaintiff village.

Petitioner's residence was constantly changing between New York and North Carolina for months at a time. It was not possible to specify during the time of Petitioner's North Carolina

marriage all of Petitioner's comings and goings. It was in fact the board's own executive secretary that made an issue of Petitioner's residency prior to the full board hearing. Because it was the one time period Petitioner was away from New York that was documented, the Petitioner complied with the requirements of the North Carolina Board that he update the accuracy of his application by filing an amendment that his residence status from December, 1987 through March, 1988 was specifically North Carolina.

In spite of this, the Board found that Petitioner lacked candor with the board and misrepresented his "residence" to the board and to the New York court.

The North Carolina Board of Law Examiners in their order of January 25, 1993, and later affirmed by the Supreme Court of North Carolina July 31, 1996, stated at page 9 of their decision and findings of fact that:

> "[The] Applicant's conduct demonstrates a lack of fairness and candor in dealing with the Board...and...demonstrates the absence of good faith and fair dealing with both the Supreme Court of the State of New York and the Board. The Board finds that the Applicant made numerous untruthful statements about his occupation and use of his Mineola residence and that the effect of these statements was to mislead and deceive the Court and the Board." The board then reached the following conclusion of law at page 10: "The Applicant's untruthful and misleading material statements under oath in legal documents filed in the Supreme Court of the State of New York, which were compounded by his untruthful and misleading sworn testimony before the Board, have a significant bearing upon the Applicant's character and fitness."

The Supreme Court of North Carolina went on to characterize this aspect at page 9 of their affirmance as follows:

> "Residency is a material issue in a comity application to the North Carolina Bar...In his final assignment of error, applicant contends that in defending himself against the Village of Mineola, he was permitted to 'assert a temporary position in order to improve his chances of winning a suit where the position asserted [was] not

> illegal'...Here, the board determined that applicant's statements regarding his New York residency were untruthful and misleading and had a significant bearing upon his character and fitness. The board, as an instrument of the State, has 'wide freedom to gauge on a case-by-case basis the fitness of an applicant to practice law'...and nothing in the record indicates that the board's decision resulted from an arbitrary, capricious, or erroneous performance of its duties."

The North Carolina Supreme Court's assertion that "residency is a material issue in a comity application" is not correct. Per rules Governing Admission to the Practice of Law in the State of North Carolina, Section .0502, the comity applicant only needs to: "(3) Prove to the satisfaction of the Board that the applicant is duly licensed to practice law in a state, or territory of the US... having comity with North Carolina...and that while so licensed therein, the applicant has been, for at least four out of the last six years, immediately preceding the filing of this application...actively and substantially engaged in the practice of law."

Interestingly, the North Carolina Supreme Court in it's opinion at page 7 referred to the Petitioner's attitude as "cavalier," and later at page 9 referred to Petitioner's "quibbling over verb tenses." Yet, the board in paragraph 10 of its order changed verb tenses and facts, and the North Carolina Supreme Court has stated many things that just are not in their admission rules.

By any reading of North Carolina rule .0502 the Petitioner's residence in New York is not a prerequisite to admission to the North Carolina Bar. He must only be actively engaged in the practice of law in a state which has comity with North Carolina. Therefore, by their own rule Petitioner's residence could not be relevant to his admission.

The Board's finding that the Petitioner's actions lacked candor and were misrepresentations are unjustified and placed an unwarranted after the fact burden on the right of the Petitioner to assert a legitimate defense. Insofar as the North Carolina Supreme Court upheld the board's decision, they violated due process in that there was no rational connection between Petitioner's assertion of a viable legitimate defense and his fitness to practice.

Even more important is the unequal treatment of the Petitioner. If a non-lawyer defendant were to respond in the same manner as did Petitioner, there would have been no repercussions. He or she would have been well within his or her rights as a litigant to assert these facts. The punishment of the Petitioner by the board for the same actions violates his equal protection right to be treated as any other litigant.

The civil rights of lawyers are not watered down because they are lawyers. Any attempt to infringe upon these rights leads to a violation of the concept enshrined in the Constitution that each of us is entitled to the same çivil rights as everyone else. The most disturbing aspect in this case is that infringement of one's rights is being violated by the very people who consider it their duty and obligation to hold these rights otherwise sacred.

This Court has recently stated in the clearest terms that classification of rights based on residency, gender, or sexual preference is violative of the equal protection clause of Amendment 14 of the United States Constitution. Miller v Johnson, 132 L Ed 2d 762, 115 S Ct--, (1995); United States v. Virginia, 56 CCH S.Ct. Bull. p., (1996); Romer v. Evans, 56 CCH S. Ct. Bull. p., (1996) Residency discrimination has also been found to be a violation of the Article IV, section 2 Privileges and Immunities clause in Supreme Court of New Hampshire v. Piper, 105 SCt 1272 (1985).

This is not to detract from the understanding that when an attorney is a litigant, that person must always be cognizant of the ethical considerations which govern the profession. And though constitutional rights supplant ethical considerations when in conflict, an attorney should make every effort to conform to the code of ethics while enjoying unfettered access to rights protected by the constitution. In the same light, bar examiners should not be allowed to abuse their discretion behind a guise of their own unique brand of "due process."

Justice Douglas put it succinctly in his opinion in Spevack v. Klein, 87 SCt 625 (1967) where at page 627 he stated:

> "We conclude...that the Self-Incrimination Clause of the Fifth Amendment has been absorbed in the Fourteenth, that it extends its protection to lawyers as well as to other individuals, and that it should not be watered

> down by imposing the dishonor of disbarment and the deprivation of a livelihood as a price for asserting it."
>
> "We find no room in the privilege against self-incrimination for classifications of people so as to deny it to some and extend it to others. Lawyers are not excepted from the words 'No person * * * shall be compelled in any criminal case to be a witness against himself'; and we can imply no exception. Like the school teacher in Slochower v. Board of Higher Education of City of New York, 350 U.S. 551, 76 S.Ct. 637, 100 L.Ed. 692, and the policeman in Garrity v. State of New Jersey, 385 U.S. 493, 87 S.Ct. 616, 17 L.Ed.2d 562, lawyers also enjoy first class citizenship." (page 628)

Mr. Justice Fortas in his concurrence stated at page 630:

> "But a lawyer is not an employee of the State. He does not have the responsibility of an employee to account to the State for his actions because he does not perform them as an agent of the State. His responsibility to the State is to obey its laws and the rules of conduct that it has generally laid down as part of its licensing procedures. The special responsibilities that he assumes as licensee of the State and officer of the court do not carry with them a diminution, however limited, of his Fifth Amendment rights. Accordingly, I agree that Spevack could not be disbarred for asserting his privilege against self-incrimination."

No more need be said about the right of a lawyer to assert a legitimate defense--criminal or civil--in the same manner as any other citizen has a right to do.

And if the Petitioner had a right to assert a legitimate defense in a New York case, the North Carolina bar examiners cannot extract a price for Petitioner's assertion of such right. They cannot declare the exercise of such right to be a basis for a finding of lack of moral fitness.

One of the cornerstones of this conflict is the different attitude examiners have from various state disciplinary authorities. In her article entitled, "Moral Character as a Professional

Credential," published in *The Yale Law Journal*, Volume 94, Number 3, January, 1985, Deborah Rhode stated the following:

> "The ultimate sin in many jurisdictions is a failure to seem 'up front' with the committee. Nondisclosure, even about relatively trivial matters, may evidence the wrong 'mental attitude,' and 'glib, equivocal responses' even if technically accurate, may prove more damning than the conduct at issue."(at 544)

> "...the bar's administration of admission and disciplinary processes has yielded...a double standard; both substantive and procedural requirements are more solicitous of practitioners than applicants. In admission proceedings, the applicant has the burden of establishing good moral character, frequently under circumstances lacking formal due process safeguards. By contrast, in disciplinary proceedings, the bar must establish unfitness to practice, generally in accordance with more stringent procedural mandates."(at 547)

> "So too, as courts have frequently noted, the scope of moral inquiry is broader for applicants than incumbents. Substantive standards generally restrict disbarment proceedings to specific acts of moral turpitude, whereas certification may extend to general character traits inferred from far more venial sins."(at 547)

This Court could not have made it's feelings any clearer about the relationship between good moral character and rights under the Fourteenth Amendment than its ruling in Schware v. Board of Bar Examiners of the State of New Mexico, 77 SCt 752 (1957) in which Mr. Justice Black stated at page 756:

> "A State may not exclude a person from the practice of law or from any other occupation in a manner or for reasons that contravene the Due Process or Equal Protection Clause of the Fourteenth Amendment...A state may require high standards of qualification such as good moral character or proficiency in its law before it admits an applicant to the bar, but any qualification must have a rational connection with the applicant's fitness or capacity to practice law."

Justice Black went on to say at page 758 that:

> "In determining whether a person's character is good the nature of the offense which he has committed must be taken into account. In summary, these arrests are wholly insufficient to support a finding that Schware had bad moral character at the time he applied to take the bar examination. They all occurred many years ago and in no case was he ever tried or convicted for the offense for which he was arrested."

Justice Black concluded by saying at page 760 that:

> "The State contends that even though the use of aliases, the arrests, and the membership in the Communist Party would not justify exclusion of petitioner from the New Mexico bar if each stood alone, when all three are combined his exclusion was not unwarranted. We cannot accept this contention. In the light of petitioner's forceful showing of good moral character, the evidence upon which the State relies--the arrests for offenses for which petitioner was neither tried nor convicted, the use of an assumed name many years ago, and membership in the Communist Party during the 1930's--cannot be said to raise substantial doubts about his present good moral character. There is no evidence in the record which rationally justifies a finding that Schware was morally unfit to practice law."

Mr. Justice Frankfurter in his concurring opinion at page 761 stated: "Refusal to allow a man to qualify himself for the profession on a wholly arbitrary standard or on a consideration that offends the dictates of reason offends the Due Process Clause."

Schware clearly is saying that for a person to be precluded from the bar, there has to be a reasonable connection between good moral character, or lack thereof, and the actions of the person. Further, an accumulation of three issues that by themselves would be insufficient to support a finding of lack of moral fitness, is also unwarranted.

The board in North Carolina used the three separate and distinct amendment/updates of the Petitioner's application as a basis for finding that Petitioner was unfit. However, they gave the three instances a cumulative effect and allowed each to bolster the

other in order to justify a decision not based in reason. If each individual instance were to be looked at separately, it would be insufficient, even if the examiners' reasoning regarding each was valid, to support the conclusion reached. Together, there is still insufficient evidence to support the conclusion. Based on the Constitutional standards set by Schware (supra), the North Carolina board's conclusions and actions are violative of due process.

The North Carolina bar examiners have taken a case where the Petitioner was sued for an injunction and used his valid defense as a basis for finding that Petitioner is now lacking in moral fitness because his "answer" in the suit was 1) misleading to the New York court, and 2) misleading to the examiners because he insisted on the truthfulness of the pleading.

This is a heretofore unheard of extrapolation and interference with a person's right to a defense, and places an unwarranted burden on the attorney as litigant. It cuts right to the heart of the meaning of due process and equal protection, and calls out for review by this Court.

RIGHT TO REASONABLE UNIFORMITY OF STANDARDS IN ASSESSMENT OF MORAL FITNESS

The California Committee of Bar Examiners, after a review of the Petitioner's application which contained essentially the same information as provided to the North Carolina Board of Law Examiners, found the Petitioner to be morally fit to practice in California. (App.I) This finding was made less than a month after the North Carolina Board's decision that Petitioner failed to meet their moral fitness standards.

The facts speak for themselves. How could two states reach the opposite conclusions as to moral fitness within two weeks of each other?

Clearly these states are following different criteria in a very subjective area, and it may be their right to do so. But it is the Petitioner's position that either there must be clear notice of what standards are being applied in these bar matters, or there must be some common objective standard used.

If there is insufficient notice as to just what each state uses for a standard, then there is a violation of due process. If there is

insufficient uniformity and a lack of common objective standards among all the states, then there has to be a violation of equal protection.

Either way, with a vastly more mobile society today, it is an unfair burden and clear violation of the civil rights of those who are traditionally looked on as the champions of those very rights.

II. BAR ADMISSION PROCEDURES MUST COMPORT WITH DUE PROCESS BY BEING BASED ON RULES THAT SET FORTH CLEAR AND OBJECTIVE STANDARDS WITH REGARD TO MORAL FITNESS, NOTICE, MATERIALITY, STANDARDS OF PROOF, AND IMPARTIALITY.

It is the position of the Petitioner that the North Carolina Board of Law Examiners and the Supreme Court of North Carolina, for whom the board acts, has violated Petitioner's rights to Due Process of law guaranteed by the Fourteenth Amendment of the United States Constitution.

The board through its order of January 25, 1993 and its later affirmance by the Supreme Court of North Carolina on July 31, 1996 violated Petitioner's right to due process of law by failing to provide appropriate notice and opportunity to be heard on all the issues on which it based its decision. Further, and in so violating the Petitioner's civil rights, both the board and subsequently the North Carolina Supreme Court, misinterpreted their own rules, reached conclusions unsupported by evidence in the record, and even made conclusions on evidence that was not part of the record. Further, the board's action in violation of the Petitioner's civil rights was willful.

It should be said at the outset that one of the most astonishing pronouncements in this case came from the North Carolina Supreme Court itself whereby they as much as stated at page 10 of their opinion that there is no specific standard of proof that applies to their examiners, but that it is something less than the preponderance found in civil cases. This is a clear violation of due process fundamental fairness. With respect to this the North Carolina Supreme Court said: "This Court has held that while an applicant's conversion of funds owed to a private investigator 'did not necessarily rise to the level of a criminal offense or civil liability, such an evidentiary showing is not necessary in a Board proceeding to determine an applicant's moral fitness to

practice law in North Carolina.' *Legg*, 325 N.C. at 670, 386 S.E.2d at 181." [Emphasis added]

In addition to applying an unquantified standard of proof, the North Carolina Supreme Court also made factual errors in stating Petitioner had failed to disclose he had taken the New Mexico bar exam in 1973. Yet a look at the Petitioner's answer to question 30 shows it to be right there. And the North Carolina Supreme Court went on to characterize it's admission rules as saying things about "materiality" and "documents" and "residency" when such words are nonexistent in the provisions being referred to.

In addition to having an unquantifiable standard of proof that allowed the examiners to reach erroneous conclusions, the conclusions of the proceedings were the result of a systematic perversion of specific rights to due process and equal protection set forth by the United States Supreme Court in a series of decisions starting back to 1957.

The Petitioner must ask the Court to consider at this point some elements of logic relating to the board's conclusions. The board has used very strong language and the ultimate of sanctions about three matters which from most perspectives appear rather insignificant and removed from the scope of moral fitness concerns. Finally, if there was adequate notice to anyone of the way this board was capable of operating when it was so inclined, this Petitioner would not be asking this Honorable Court for writ consideration.

To paraphrase a merchant of long ago Venice, who said once, "If you prick us do we not bleed?" Well when lawyers are denied their civil rights, they, too, bleed. When the ones responsible for the breach are lawyers, they should particularly be held to task.

This applicant is not denying that each state has a right to determine who should be permitted to practice law. However, as has been set forth in Schware v. Board of Bar Examiners of the State of New Mexico, 77 S Ct 752 (1957), there must be a reasonable relationship between the State's requirements for qualification and an applicant's "fitness or capacity" to practice law. Failure of a state to establish that connection will result in violation of Due Process and Equal Protection.

Here it is worth restating what Justice Black said in Schware at page 756:

> "A State may not exclude a person from the practice of law or from any other occupation in a manner or for reasons that contravene the Due Process or Equal Protection Clause of the Fourteenth Amendment...A state may require high standards of qualification such as good moral character or proficiency in its law before it admits an applicant to the bar, but *any qualification must have a rational connection with the applicant's fitness or capacity to practice law.*" [Emphasis added]
>
> "He [Schware] demonstrated candor by informing the Board of his personal history." (page 757)
>
> "In determining whether a person's character is good the nature of the offense which he has committed must be taken into account." (page 758)
>
> "The State contends that even though the use of aliases, the arrests, and the membership in the Communist Party would not justify exclusion of petitioner from the New Mexico bar if each stood alone, when all three are combined his exclusion was not unwarranted. We cannot accept this contention. In the light of petitioner's forceful showing of good moral character, the evidence upon which the State relies--the arrests for offenses for which petitioner was neither tried nor convicted, the use of an assumed name many years ago, and membership in the Communist Party during the 1930's--cannot be said to raise substantial doubts about his present good moral character. There is no evidence in the record which rationally justifies a finding that Schware was morally unfit to practice law." (page 760)

A close look at the "offenses" of the Petitioner herein makes it clear that the State of North Carolina has failed to establish the "rational connection" required by Schware (supra).

The number of times an individual takes a bar examination is not, in and of itself, an indicia of character which relates to one's ability to practice law unless one considers tenacity a negative character trait.

The fact that Petitioner gathered the necessary information on this issue, explicitly following the instructions of the board's executive secretary, and insuring that the information was provided to the board is also an indication of good faith and good character although the board chose to view it otherwise.

The Petitioner did, indeed, keep the board informed of the status of his New York federal case; once in writing in January, 1992, and under oath at the board proceedings. The board's own Section .0603 requires no more. How can the board find a rational connection between these positive and affirmative acts of compliance and unfitness to be admitted?

Both of these decisions show such a deviation from the norm of what would be considered a "rational connection" between the applicant's conduct and fitness to practice that no reasonable man would reach the same conclusion as the board or the North Carolina Supreme Court did if they were effectively using the standards set forth in Schware. Failure to apply those standards resulted here in clear due process violations.

Mr. Justice Frankfurter in concurring with Justice Black at page 761 stated: "Refusal to allow a man to qualify himself for the profession on a wholly arbitrary standard or on a consideration that offends the dictates of reason offends the Due Process Clause."

Following Schware are two successive cases from California. Konigsberg v. State Bar of California, 77 SCt 1374 (1957) (Konigsberg I), and Konigsberg v. State Bar of California, 81 SCt 997 (1961) (Konigsberg II).

In Konigsberg I, the findings of the state supreme court were not supported by lawful evidence. This Court found that the ruling of the Committee of Bar Examiners of the State of California was arbitrary and capricious because *there was no reasonable connection between the information being sought by the bar and the applicant's fitness to practice*, [Emphasis added] and that makes it violative of due process. *There has to be notice of the specific expectations of the bar examiners*, [Emphasis added] and there has to be notice of the consequences for failure to meet such expectations. California's refusal to admit Konigsberg was reversed as there was no evidence to show applicant's lack of good character. At page 724, Justice Black found:

> "He insisted that in determining whether he was qualified the Committee had to comply with due process of law and cited as supporting his position Wieman v. Updegraff 344 U.S. 183, 73 S.Ct. 215, 97 L.Ed. 216, and Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123, 71 S.Ct. 624, 95 L.Ed. 817, where this Court condemned arbitrary findings as offensive to due process."

Konigsberg I further held that where the California Bar denied admission because of the negative inference they drew from Konigsberg's refusal to answer questions about possible past membership in the Communist Party, the inference was improper.

This Court found at page 727:

> "If and when a state makes failure to answer a question an independent ground for exclusion from the Bar, then this Court, as the cases arise, will have to determine whether the exclusion is constitutionally permissible."

> "Does the evidence in the record support any reasonable doubts about Konigsberg's good character or his loyalty to the governments of State and Nation. In considering this issue, we must, of course, take into account the Committee's contention that Konigsberg's failure to respond to questions was evidence from which some inference of doubtful character and loyalty can be drawn...He contends here, as he did in the California court, that there is no evidence in the record which rationally supports a finding of doubt about his character or loyalty. If this contention is correct, he has been denied the right to practice law although there was no basis for the finding that he failed to meet the qualifications which the State demands of a person seeking to become a lawyer. If this is true, California's refusal to admit him is a denial of due process and of equal protection of the laws because [the refusal] is both arbitrary and discriminatory. After examination of the record, we are compelled to agree with Konigsberg that the evidence does not rationally support the only two grounds upon which the Committee relied in rejecting his application for admission to the California Bar."

In the present case, there was no refusal by the Petitioner to answer any of the board's questions. Petitioner followed the specific requests and instructions of the board's executive secretary for missing information. The board then objected to the original manner in which the information was provided as lacking specificity and "tending to mislead." In spite of Petitioner providing all additional information requested by the board's secretary, the board still drew a negative inference, unsupported by any evidence and contrary to the facts. These actions were arbitrary and discriminatory and therefore violative of due process.

The reason the board in the instant case was able to do this was the lack of articulable standards. This failure to clearly set forth standards of review is violative of due process.

In Konigsberg II, California's refusal to admit applicant this time was upheld because his refusal to answer certain questions about past political affiliations was characterized as an obstruction of the legitimate character investigation process, and thus not arbitrary nor discriminatory. In California, a refusal by the applicant to answer the question posed by the committee could be grounds for denial of admission. The rule itself was not found to be violative of due process. However the U.S. Supreme Court found that should the committee fail to warn the applicant of the consequences of his refusal to answer, then the lack of warning gave rise to a constitutional violation.

In other words, in Konigsberg I this Court found that past membership in the Communist Party was meaningless as to character. At the same time there was no notice about consequences of refusal to answer any questions. In Konigsberg II a refusal to cooperate with a character investigation by refusing to answer questions about Communist Party membership was found to be a meaningful obstruction of the investigation which was grounds for denial if on notice of consequences.

In North Carolina, the notice of the full extent of the bar examiners' concerns is revealed by the bar examiners only after they have handed out a rejection. This does not comport with due process as set forth in Konigsberg I and II. In other words, there is no reasonable connection between the present Respondent's findings and the evidence. The information they requested was provided, but not only was there no connection

between the facts provided and the examiners' conclusions, there was also no notice that such consequences would result from not just providing the information they wanted, but from not providing it in a very particular manner: providing exam information by writing to the California bar for exact exam dates at the specific request of the board's executive secretary amounted to a lack of candor and carelessness; filing an amendment as to residence on the amendment form provided by the board was misleading; updating the status of a pending case once in writing in January, 1992, and later updating it orally under oath at the hearing amounted to intentionally withholding material information. Clearly there was no withholding of information and the disclosure both written and oral was entirely in conformance with the board's rule .0603. In fact there was more than a year and a half delay, controlled entirely by the board's executive secretary, between submission and hearing. It was the board's own delays and lack of standards that dated information originally provided by Petitioner. There was no reasonable relationship between the board's finding of lack of moral fitness and the materiality of these facts other than to be violative of due process as set forth in Schware and Konigsberg I and II.

Finally, in Konigsberg II at page 1002, Justice Harlan set forth the standard of proof used in judgment of character:

> "If at the conclusion of the proceedings the evidence of good character and that of bad character are found in even balance, the State may refuse admission to the applicant, just as in an ordinary suit a plaintiff may fail in his case because he "If at the conclusion of the proceedings the evidence of good character and that has not met his burden of proof."

This is in sharp contrast to the erroneous standard of proof set forth in the opinion of the Supreme Court of North Carolina on page 10 of the instant case, which bears repeating here and says:

> "This Court has held that while an applicant's conversion of funds owed to a private investigator 'did not necessarily rise to the level of a criminal offense or civil liability, such an evidentiary showing is not necessary in a Board proceeding to determine an applicant's moral fitness to practice law in North Carolina.' *Legg*, 325 N.C. at 670, 386 S.E.2d at 181."

This again begs the question of just what new standard of proof is North Carolina applying?

In Wilner v Committee on Character and Fitness, 83 SCt 1175 (1963), Mr. Justice Goldberg offered this concurring opinion at page 1182:

> "Certainly lawyers and courts should be particularly sensitive of, and have a special obligation to respect, the demands of due process...In reviewing state action in this area, as in all others, we look to substance, not to bare form, to determine whether constitutional minimums have been honored."
>
> "The constitutional requirements in this context may be simply stated: in all cases in which admission to the bar is denied on the basis of character, the applicant at some stage of the proceedings prior to such denial, must be adequately informed of the nature of the evidence against him and be accorded an adequate opportunity to rebut this evidence." [Emphasis added]

At no point either before or during the hearing did the board indicate the full extent of their concerns--which in fact they could not, if they were intent on denial. Although they did indicate that they would be questioning the Petitioner regarding the sufficiency of his practice in New York and about the New York zoning case, they did not indicate any concern regarding residency, the times and places Petitioner had taken other bar examinations nor concerns regarding the status of the New York federal case. Basing Petitioner's rejection on those specific issues was violative of due process based upon this Court's decision in Wilner (supra) since there was neither substance in nor adequate opportunity provided to reply to the board's concerns.

At no point from the time this application was filed to the time the full *de novo* North Carolina board conducted its hearing (February, 1991 through October 1992, a full 20 months) was there a specific interest or concern by the board regarding the Petitioner's character. At the three board member "panel hearing" the panel showed no interest in the New York zoning case other than the chairman's opening the interview by joking about the difference between a "basement" and a "cellar," and moving on to other matters. Their decision signed by the three

panel members said nothing more than that Petitioner failed to meet their comity requirements. After notice of appeal to the full board for a *de novo* hearing was filed by Petitioner, the board's executive secretary wrote that Petitioner should be prepared to "substantiate" his practice and "will also be questioned about" the New York zoning case. That was the extent of any indication that the board was concerned with any particular issue.

Interestingly, the *de novo* board's opinion at page 7, paragraph 14 in reference to the New York zoning case states: "The Amendment was submitted after the Applicant had been questioned about the lawsuit by the Board's Hearing Panel on September 10, 1992..." This is both false and improper. First, questions about that lawsuit were raised by the board's executive secretary, Fred Parker, *not* by the panel members. Second, that participation was unauthorized, improper, not on notice, and not part of the record of the *de novo* full board hearing. And Third, the secretary's improper participation still provided no notice of what the board would specifically be concerned about more than that the answer to question #6 on the application concerning "every permanent and temporary residence you have ever had," was not specific enough.

Due process requires that there be a reasonable connection between the evidence presented and the finding made by the trier of fact. Clearly, in order to sustain this requirement, the information requested by the board must be relevant and material to the applicant's fitness to practice law. Failing to establish rules which insure this connection is a violation of due process. Konigsberg I (supra).

The North Carolina Board of Law Examiners, in their rules, fails to set forth any rules or standards regarding what issues and information they consider to be material and relevant to an applicant's fitness to practice law. The nearest thing to such standard is section .0603, which calls for a denial of a license based upon a failure to disclose any facts relating to disciplinary, civil or criminal proceedings in other states. This general lack of standards and rules regarding the board's character determinations results in ad hoc decisions being made by the board based upon the board's subjective evaluation of the information presented, and this is all done without notice to the applicant of the standards being applied to his or her case. This is a clear violation of due process.

With regard to the issue of these proceedings taking place before an unbiased trier of fact, the full transcript will show on grant of certiorari that the board took over questioning from the attorney general in much the same manner that the executive secretary took over questioning from his own board in the earlier panel hearing. They became the prosecutor and judge to justify a predetermined position. This was a violation of Petitioner's right to an impartial and unbiased trier of fact and resulted in a further violation of Petitioner's civil rights. These violations along with the opinions themselves show that the process was purposefully flawed.

Indeed, the performance of the North Carolina examiners in the immediate case, and the scope and purposefulness of this type of inquiry generally, is called into question by Deborah Rhode, in her article "Moral Character as a Professional Credential, "published in the Yale Law Journal, Volume 94, Number 3, January, 1985, where she described [footnotes deleted] at page 551 "The Undisciplined Scope of Professional Discipline" as follows:

> "On the whole, bar assessments of moral character have proven as subjective and inconsistent in the context of nonprofessional discipline as in admissions.
>
> "For the past century, the Supreme Court has declined to review disbarments for nonprofessional misconduct, and its pronouncements in related contexts have done little to define the relevant inquiry."

Ms. Rhode went on to comment at page 555 about "The Predictive Power of Prior Conduct," stating that:

> "Most bar examiners involved in the certification process express confidence in its general effectiveness...Most examiners...gave glowing testimonials: The Illinois system was deemed '95% effective' and West Virginia's was 'as near perfect as you can get.' According to the secretary of the Arkansas Board of Examiners, since 'lawyers evaluate other individuals such as witnesses, jurors, clients and adversaries on a consistent basis,...we [attorneys] are the only ones who can make moral determinations of our fellow men. After all, we know better than anyone else if someone is lying.' Much of the bar's published

> commentary has been equally Panglossian; Georgia's system has had 'virtually no problems' and Pennsylvania has been thought never to have wrongfully excluded any applicant.
>
> "Despite most bar examiners' confidence in their predictive capacities, there have been no attempts, however primitive, to assess the effectiveness of certification procedures. Not only is there an absence of controlled research, no state bar has examined the records of disciplined or disbarred attorneys to determine what, if anything, in their records as applicants might have foreshadowed later problems. Nor have any studies attempted to examine the careers of candidates denied admission for evidence of subsequent moral lapses. Finally, and perhaps most disturbingly, the courts and examiners involved in certification have failed to confront the large volume of social science research that questions both the consistency and predictability of moral behavior."

Rather telling is her statement at page 526 that, "taken as a whole, the current certification process is an extraordinarily expensive means of providing a dubious level of public protection." In other words, there is no rational relationship between support for this type of character inquiry by the government and the end result. There is in fact no evidence to support the contention that the examiners are able to screen out attorneys who will not properly serve the public. And similarly, there is also no evidence to show that those who are admitted shall engage in unethical behavior any less frequently than those who are excluded.

The most logical explanation for this type of thinking is that too often such inquiries are used to justify the existence of the inquisitors.

CONCLUSION

Moral fitness should not be judged by the assertion in a legal action of a legitimate defense. Moral fitness should not be judged by the number of times an applicant has taken a bar examination, except to the extent that it shows commitment and tenacity. Moral fitness should not be judged by providing update information orally and under oath, except to the extent it

shows an honest and reasonable effort to comply with the requirements of the board to keep them informed up to the time the board makes it decision. And moral fitness should not be judged by where a person resides.

Respondents put an unfair burden on Petitioner's right to defend himself in the New York zoning case. This is a clear violation of equal protection. The Board's findings regarding this issue are especially egregious and violative of equal protection when considered in light of the fact that California, based on the same facts, found Petitioner to be morally fit.

The rest of Petitioner's nearly 200 page application should finally be considered both as to the Petitioner's overwhelming showing of good moral fitness in his nearly two decade public interest practice of helping the poor and indigent. The length and substance of the application should be equally considered as to the Respondent's overwhelming showing of bias in their purposeful violation of Petitioner's 14th Amendment right to due process. The board and the North Carolina Supreme Court reduced the Petitioner's entire career and character down to instances in which they found him to be "cavalier" about the California bar exam, on their insistence that the Petitioner had no right to assert the defense asserted in the New York zoning case, and on Petitioner's alleged failure to notify them of the status of his New York federal case in the manner and at the time they considered appropriate (although there are no guidelines set out in the Respondent's "Rules Governing Admission" which would inform any applicant of when and how these updates should be provided and what they should consist of).

Finally, the Respondent's standard of proof and rules of evidence continue to remain an unquantifiable factor in this equation and continue to promote a lack of fundamental fairness in Respondent's proceedings. Further, there is no rational relationship between this type of scrutiny and the respondent's ability to predict future conduct, which in turn heightens the necessity for due process review.

In the past this Court has addressed the due process issues raised in bar admission character proceedings but has never addressed the concept of the lawyer as litigant. Neither has this court addressed the question of fundamental fairness and predictive efficacy for this type of character scrutiny. In this case there is

now an opportunity to return bar admissions back to the basics of due process so championed by this Court decades ago. There is the opportunity to set forth some standards and guidance to which attorney-litigants can turn. And, there is an opportunity to clarify whether attorneys involved in litigation can assert the same rights and privileges as every other citizen.

For the above intentional violations of Petitioner's civil rights by the Respondents in contravention of this Court's prior explicit rulings and in contravention of the Fourteenth Amendment of the Constitution of the United States, the judgment of the Supreme Court of North Carolina affirming the order of its board should be reviewed by this Court's grant of a writ of certiorari.

Respectfully submitted

David Golia-Paladin, Esq.

Pro Se
P.O. Box 66
Mineola, New York 11501
516 742 4699
December 17, 1996

APPENDIX A

[North Carolina Board Of Law Examiners Three Member Panel Decision And Order, September 24, 1992]

NORTH CAROLINA
WAKE COUNTY

BEFORE THE BOARD OF LAW EXAMINERS
OF THE STATE OF NORTH CAROLINA

In the Matter of:

DAVID ERNEST GOLIA-PALADIN
ORDER

Applicant to the North
Carolina Bar by comity

This cause came on to be heard at a hearing conducted on Thursday, September 10, 1992, before the undersigned members of the Board of Law Examiners of the state of North Carolina who served as a Hearing Panel appointed by the Chairman of the Board of Law Examiners for the purpose of receiving evidence on which the Hearing Panel could determine whether David Ernest Golia-Paladin had met all the requirements of Rule .0502 of the Rules Governing Admission to the Practice of Law in the State of North Carolina and thereby be eligible to be admitted to the North Carolina Bar by comity.

The applicant was given due notice of this hearing and appeared

in person and was represented by Thomas F. Loflin III.
The Hearing Panel, having considered all of the evidence presented by the applicant in support of his application finds that he has failed to satisfy the Panel that he has met all of the requirements of Rule .0502 of the Rules Governing Admission to the Practice of Law in the State of North Carolina and concludes that David Ernest Golia-Paladin's application to be admitted to the North Carolina Bar by comity should be denied.

IT IS THEREFORE ORDERED that David Ernest Golia-Paladin's application be denied.

Entered this the 24th day of September, 1992.

/s/STEPHEN R. BURCH
Stephen R. Burch
Panel Member

/s/BILLIE L POOLE
Billie L Poole
Panel Member

/s/THOMAS W. STEED, JR
Thomas W. Steed Jr.
Panel Member

Under Rule .1203(2) an applicant may request a hearing de novo before the full Board by giving written notice to the Secretary within ten Full days of receipt of this Order.
CERTIFIED MAIL # P753549619

APPENDIX B

[North Carolina Board Of Law Examiners Rules Governing Admission, As Amended--July 26, 1990]

RULES
GOVERNING ADMISSION
TO THE
PRACTICE OF LAW
IN THE
State of North Carolina

The Board of Law Examiners of the State of North Carolina

208 Fayetteville Street Mall
P. O. Box 2946
Raleigh, North Carolina 27602

AS AMENDED-JULY 26, 1990

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SECTION .0100-ORGANIZATION

.0101 ADDRESS
The offices of the Board of Law Examiners of the State of North Carolina are located in the N. C. State Bar Building at 208 Fayetteville Street, Raleigh, N. C. The mailing address is P. O. Box 2946, I Raleigh, N. C 27602. The offices are open from 9:00 a.m. to 5:00 p.m. Monday through Friday, excepting holidays.

.0102 PURPOSE
The Board of Law Examiners of the State of North Carolina was created for the purpose of examining applicants and providing rules and regulations for admission to the bar including the issuance of licenses therefor.

.0103 MEMBERSHIP
The Board of Law Examiners of the State of North Carolina consists of eleven members of the N. C. Bar elected by the Council of the North Carolina State Bar. One member of said Board is elected by the Board to serve as chairman for such period as the Board may determine. The Board also employs an executive

secretary to enable the Board to perform its duties promptly and properly The executive secretary, in addition to performing the administrative functions of the positions, may act as attorney for the Board.

SECTION .0200-GENERAL PROVISIONS

.0201 COMPLIANCE

No person shall be admitted to the practice of law in North Carolina unless that person has complied with these rules and the laws of the state.

.0202 DEFINITIONS

(1) The term "Board" as used in this chapter refers to the "Board of Law Examiners of the State of North Carolina." A majority of the members of the Board shall constitute a quorum, and the action of a majority of a quorum present and voting, shall constitute the action of the Board.

(2) The term "secretary" as used in this chapter refers to the "Executive secretary of the Board of Law Examiners of the State of North Carolina."

(3) As used in these rules, the Word "filing" or "filed" shall mean received in the office of the Board of Law Examiners.

(4) As used in these rules, the word "Chapter" refers to the "Rules Governing Admission to the Practice of Law in the State of North Carolina."

.0203 APPLICANTS

For the purpose of these rules, applicants are classified either as "general applicants" or as "comity applicants." To be classified , as a "general applicant" and certified as such for admission to practice law. an applicant must satisfy the requirements of Rule .0501 of

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this Chapter. To be classified as a "comity applicant" and certified as such for admission to practice law, a person shall satisfy the requirements of Rule .0502 of this Chapter.

.0204 LIST

As soon as possible after each filing deadline for applications, I the secretary shall prepare and maintain a list of general applicants for the

ensuing examination.

.0205 HEARINGS

Every applicant may be required to appear before the Board to be examined about any matters pertaining to the applicant's moral character and general fitness, educational background or any other matters set out in Section .0500 of this Chapter.

.0206 NONPAYMENT OF FEES

Failure to pay the fees as required by these rules shall result in a denial of the application to take the North Carolina Bar Examination. All checks payable to the Board for any fees which are not honored upon presentment shall be returned to the applicant who shall, within ten (10) days following the receipt thereof, pay to the Board in cash, cashier's check, certified check or money order, any fees payable to the Board.

SECTION .0400-APPLICATIONS OF GENERAL APPLICANTS

.0401 HOW TO APPLY

Applications for admission to an examination must be made upon forms supplied by the Board and must be complete in every detail. Every supporting document required by the application form must

be submitted with each application. The application form may be obtained by writing or telephoning the Board's offices.

.0402 APPLICATION FORM

(1) The application form requires an applicant to supply full and complete information relating to the applicant's background, including family history, past and current residences, education, military service, past and present employment, credit status, involvement in disciplinary, civil or criminal proceedings, substance abuse, mental treatment and bar admission and discipline history. Applicants must list references and submit as part of the application:

- Four Certificates of Moral Character from individuals who know the applicant;
- A recent photograph;
- One set of clear fingerprints
- Two executed informational Authorization and Release forms;
- A birth certificate;
- Transcripts from the applicant's undergraduate schools;
- A copy of all applications to take a bar examination or an attorney's examination or for admission to the practice of law that

the applicant has filed with any state, territory, or the District of Columbia; A certificate from the proper court or agency of every state in which applicant is or has been licensed, that the applicant is in good standing and not under pending charges of misconduct;

- Copies of any legal proceedings in which the applicant has been a party.

The application must be filed in duplicate. The duplicate may be a photocopy of the original.

(2) An applicant who has aptly filed a complete application with the Board within the past twelve (12) month period immediately preceding the filing deadline specified in Rule .0403 of this Chapter may file a Supplemental Application on forms supplied by the Board, alone with the applicable fees. An applicant who has filed a Supplemental Application as provided by this rule within the past seven (7) month period immediately preceding the filing deadline specified in Rule .0403 of this Chapter may file a subsequent Supplemental Application on forms supplied by the Board, along with the applicable fees. The Supplemental Application will update the information previously submitted to the Board by the applicant. Said Supplemental Application must be filed by the deadline set out in Rule .0403 of this Chapter.

.0403 FILING DEADLINES

(1) Applications shall be filed and received by the secretary at the offices of the Board not later than 5:00 p.m. Eastern Standard Time on the second Tuesday in January immediately preceding the date of the July written bar examination and not later than 5:00 p.m. Eastern Daylight Savings Time, on the second Tuesday in October immediately preceding the date of the February written bar examination.

(2) Upon payment of a late filing fee of $150 in addition to all other fees required by these rules), an applicant may file a late application with the Board not later than 5:00 p.m. Eastern Standard time, on the second Tuesday in March immediately preceding the July written bar examination and not later than 5:00 p.m. Eastern Standard Time, on the first Tuesday in November immediately preceding the February written bar examination

3) An applicant who has aptly filed an application to stand the February written bar examination may make application to take the immediately following July bar examination by a Supplemental Application with the secretary of the Board at the offices of the Board not later than 5:00 p.m., Eastern Daylight Savings time, on the first Tuesday in May immediately preceding the July written examination.

.0404 FEES

Every application by an applicant who:

(1) is not a licensed attorney in any other jurisdiction shall be accompanied by a fee of $400.00

(2) is a licensed attorney in any other jurisdiction shall be accompanied by a fee of $800.00.

(3) is filing to take the North Carolina Bar Examination using a Supplemental Application shall be accompanied by a fee of $300.00

(4) is filing after the deadline set out in Rule .0403(1) shall be

accompanied by a late fee of $150.00 in addition to all other fees required by these rules.

.0405 REFUND OF FEES

No part of the fee required by Rule .0404 of this Chapter shall be refunded to the applicant unless the applicant shall file with the secretary written request to withdraw as an applicant, not later than the 15th day of June preceding the July written bar examination and not later than the 15th day of January preceding the February written bar examination in which event not more than one-half of the fee may be refunded to file applicant in the discretion of the Board.

SECTION .0500-REQUIREMENTS FOR APPLICANTS

.0501 REQUIREMENTS FOR GENERAL APPLICANTS

As a prerequisite to being licensed by the Board to practice law in the State of North Carolina, a general applicant shall:

(1) possess the qualifications of character and general fitness requisite for an attorney and counselor-at-law, and be of good moral character and entitled to the high regard and confidence of the public and have satisfied the requirements of Section .0600 of this Chapter both at the time the license is issued and at the time of standing and passing a written bar examination as prescribed in Section .0900 of this Chapter;

(2) possess the legal educational qualifications as prescribed in

Section .0700 of this Chapter;

(3) be of the age of at least eighteen (18) years;

(4) have filed formal application as a general applicant in accordance with Section .0400 of this Chapter;

(5) stand and pass a written bar examination as prescribed in Section .0900 of this Chapter;

(6) have stood and passed the Multistate Professional Responsibility Examination approved by the Board within the twenty-four (24) month period next preceding the beginning day of the written bar examination prescribed by Section .0900 of this Chapter; which the applicant applies to take, or shall take and pass the Multistate Professional Responsibility Examination within the twelve (12) month period thereafter;

(7) if the applicant is a licensed attorney then the applicant be in good professional standing in every state or territory of the United States, or the District of Columbia in which the applicant has been licensed to practice law and not under pending charges of misconduct.

.0502 REQUIREMENTS FOR COMITY APPLICANTS

Any attorney at law duly admitted to practice in another state, or territory of the United States, or the District of Columbia, immigrating or who has heretofore immigrated to North Carolina

from such jurisdiction, upon written application may, in the discretion of the Board, be licensed to practice law in the State of North Carolina without written examination provided each such applicant shall:

(1) File with the Secretary, upon such forms as may be supplied by the Board, a typed application in duplicate which will be considered by the Board after at least six (6) months from the date of filing; the application requires:

(a) That an applicant supply full and complete information in regard to his background, including family, past residences, education, military, employment, credit status, whether he has been a party to any disciplinary or legal proceedings, mental illness, references, the nature of the applicant's practice of law, and familiarity with the Code of Professional Responsibility as Promulgated by the North Carolina State Bar

(b) That the applicant furnish the following documentation i Certificates of Moral Character from four (4) attorneys; ii. A recent photograph; iii. Two (2) sets of clear fingerprints; iv A certification of the Court of Last Resort from the jurisdiction from which the applicant is applying; v. Transcripts from the applicant's undergraduate and graduate schools; vi A copy of all applications for admission to the practice of law that he has filed with any state, territory or the District of Columbia; vii A certificate of admission to the bar of any state, territory or the District of Columbia; viii. A certificate from the proper court or body of every state in which the applicant is licensed therein that he is in good standing and not

under pending charges of misconduct;
(2) Pay to the Board with each written application, a fee of $1,000.00, no part of which may be refunded to the applicant whose application is denied;

(3) Prove to the satisfaction of the Board that the applicant is duly licensed to practice law in a state, or territory of the United States, or the District of Columbia having comity with North Carolina and that in such state, or territory of the United States or the District of Columbia, while so licensed therein, the applicant has been for at least four out of the last six years, immediately preceding the filing of this application with the Secretary, actively and substantially engaged in the practice of law. Practice of law for the purposes of this rule when conducted pursuant to a license granted by another jurisdiction shall include:

(a) The practice of law as defined by G.S 84-2.1; or

(b) Activities which would constitute the practice of law if done for the general public; or

(c) legal Service as a corporate counsel; or

(d) Judicial service in a court of record or other legal service with any local or state government or with the federal government; or

(e) Service as a member of a Judge Advocate General's Department of one of the military branches of the United States, whether or not such service is in the jurisdiction in which applicant is duly

licensed; or
(f) A full time faculty member in a law school approved by the Council of the North Carolina State Bar.

(*sic*)Employment in North Carolina, when conducted pursuant to a license granted by another jurisdiction, to meet the requirement of this rule is limited to:

(a) Employment as house counsel by a person, firm, association, or corporation engaged in business in this state which business does not include the selling or furnishing of legal advice or services to others: or

(b) Employment: as a full time faculty member of a law school approved by the Council of the North Carolina State Bar, or

(c) Employment as a full time member of the faculty of the Institute of Government of the University of North Carolina at Chapel Hill; or

(d) Service as a member of a Judge Advocate General's Department of one of the military branches of the United States.

(4) Satisfy the Board that the state, or territory of the United States, or the District of Columbia in which the applicant is licensed and from which he seeks comity will admit North Carolina attorneys to the practice of lay. in such state, or territory of the United States, or the District of Columbia without written examination, other than the Multistate Professional Responsibility Examination;

(5) Be at all times, in good professional standing in every state, or territory of the United States, or the District of Columbia in which the applicant has been licensed to practice law and not under pending charges of misconduct while the application is pending before the Board;

(6) Be of good moral character and have satisfied the requirements of Section .0600 of this Chapter;

(7) Meet the educational requirements of Section .0700 of this Chapter as hereinafter set out if first licensed to practice law after August, 1971;

(8) Not have taken and failed the written North Carolina Bar Examination within ten (10) years prior to the date of filing the applicant's comity application;

(9) Have stood and passed the Multistate Professional Responsibility Examination approved by the Board.

SECTION .0600-MORAL CHARACTER AND GENERAL FITNESS

.0601 BURDEN OF PROOF

Every, applicant shall have the burden of proving that the applicant possesses the qualifications of character and general fitness requisite for an attorney and counselor-at-law and is possessed of good moral character and is entitled to the high regard and confidence of the public.

.0602 PERMANENT RECORD

All information furnished to the Board by an applicant shall be deemed material, and all such information shall be and become a permanent record of the Board.

.0603 FAILURE TO DISCLOSE

No one shall be licensed to practice law by examination or comity or be allowed to take the bar examination in this state:

(1) who fails to disclose fully to the Board, whether requested to do so or not, the facts relating to any disciplinary proceedings or charges as to the applicant's professional conduct, whether same have been terminated or not, in this or any other state, or any federal court or other jurisdiction, or

(2) who fails to disclose fully to the Board, whether requested to do so or not, any and all facts relating to any civil or criminal proceedings, charges or investigations involving the applicant. whether the same have been terminated or not in this or any other state or in any of the federal courts or other jurisdictions

.0604 BAR CANDIDATE COMMITTEE

Every applicant shall appear before a bar candidate committee appointed by the chairman of the Board, in the judicial district in which the applicant resides, or in such other judicial district as the Board in its sole discretion may designate to the applicant, to be examined about any matter pertaining to the applicant's moral

character and general fitness to practice law. An applicant who has appeared before a bar candidate committee may, in the Board's discretion, be excused from making a subsequent appearance before a bar candidate committee. The applicant shall give such information as may be required on such forms provided by the Board. A bar candidate committee may require the applicant to make more than one appearance before the committee and to furnish to the committee such information and documents as it may reasonably require pertaining to the moral character and general fitness of the applicant to be licensed to practice law in North Carolina. Each applicant will be advised when to appear before the bar candidate committee.

.0605 DENIAL; RE-APPLICATION

No new application or petition for reconsideration of a previous application from an applicant who has either been denied permission to take the bar examination or has been denied a license to practice law on the grounds set forth in Section .0600 shall be considered by the Board within a period of three (3) years next after the date of such denial unless, for good cause shown, permission for re-application or petition for a reconsideration is granted by the Board.

SECTION .0700-EDUCATIONAL REQUIREMENTS
.0701 GENERAL EDUCATION

Each applicant must have satisfactorily completed the academic work required for admission to a law school approved by the Council of the North Carolina State Bar.

.0702 LEGAL EDUCATION

Every applicant applying for admission to practice law in the State of North Carolina, before being granted a license to practice law, shall prove to the satisfaction of the Board that said applicant has graduated from a law school approved by the Council of the North Carolina State Bar or that said applicant will graduate within thirty (30) days after the date of the written bar examination from a law school approved by the Council of the North Carolina State Bar. There shall be filed with the secretary a certificate of the dean, or other proper official of said law school, certifying the date of the applicant's graduation. A list of the approved law schools is available in the office of the secretary.

SECTION .0800-PROTEST

.0801 NATURE OF PROTEST

Any person may protest the application of any applicant to be admitted to the practice of law either by examination or by comity.

.0802 FORMAT

A protest shall he made in writing, signed by the person making the protest and bearing the person's home and business address, and shall be filed with the secretary prior to the date on which the applicant is to be examined.

.0803 NOTIFICATION: RIGHT TO WITHDRAW

The secretary shall notify immediately the applicant of the protest and of the charges therein made; and the applicant thereupon may file with the secretary a written withdrawal as a candidate for admission to the practice of law at that examination.

.0804 HEARING

In case the applicant does not withdraw as a candidate for admission to the practice of law at that examination, the person or persons making the protest and the applicant in question shall appear before the Board at a time and place to be designated by the Board. In the event time will not permit a hearing on the protest prior to the examination, the applicant may take the written examination, and the results will be sealed until final disposition of the protest in favor of the applicant.

.0805 REFUSAL TO LICENSE

Nothing herein contained shall prevent the Board on its own motion from refusing to issue a license to practice law until the Board has been fully satisfied as to the moral character and general fitness of the applicant as provided by Section .0600 of this Chapter.

SECTION .0900-EXAMINATIONS

.0901 WRITTEN EXAMINATION

Two written bar examinations shall be held each year for those applying to be admitted to the practice of law in North Carolina.

.0902 DATES

The written bar examinations shall be held in the City of Raleigh beginning in the months of February and July on such dates as the Board may set from year to year.

.0903 SUBJECT MATTER

The examination may deal with the following subjects: Business Associations (including agency, corporations, and partnerships), Civil Procedure, Constitutional Law, Contracts, Criminal Law and Procedure, Evidence, Family Law, Legal Ethics, Real Property, Security Transactions including The Uniform Commercial Code, Taxation, Torts. Trusts, Wills, Decedents' Estates and Equity.

.0904 PASSING SCORE

The Board shall determine what shall constitute the passing of an examination.

SECTION .1000-REVIEW OF WRITTEN BAR EXAMINATION

.1001 REVIEW

An unsuccessful applicant to the bar examination may examine the test booklets containing the applicant's essay examination along with model answers and the essay examination in the Board's offices.

.1002 FEES

The Board will furnish an unsuccessful applicant a copy of the applicant's essay examination at a cost to be determined by the secretary not to exceed $20.00. No copies of any model answers will be made or furnished to the applicant.

.1003 MULTISTATE BAR EXAMINATION

There is no provision for review of the Multistate Bar

Examination.

.1004 SCORES

(1) Upon written request the Board will release to an unsuccessful applicant the applicant's scores on the bar examination.

(2) Upon written request of an applicant, the Board will furnish the Multistate Bar Examination score of said applicant to another board of bar examiners, or like organization that administers the admission of attorneys into that jurisdiction.

.1005 BOARD REPRESENTATIVE

The secretary of the Board serves as the representative of the Board during this review of the written bar examination by an unsuccessful applicant. The secretary is not authorized to discuss any specific questions and answers on the bar examination.

SECTION .1200-BOARD HEARINGS

.1201 NATURE OF HEARINGS

(1) All general applicants may be required to appear before the Board or a Panel at a hearing to answer inquire about any matter under these rules.

(2) Each comity applicant shall appear before the Board or Panel to satisfy the Board that he or she has met all the requirements of Rule .0502.

.1202 NOTICE OF HEARING

The chairman will schedule the hearings before the Board or Panel and such hearings will be scheduled by the issuance of a notice of hearing mailed to the applicant or the applicant's attorney within a reasonable time before the date of the hearing.

.1203 CONDUCT OF HEARINGS

(1) All hearings shall be heard by the Board except that the chairman may designate two or more members to serve as a Panel to conduct these hearings.

(2) The Panel will make a determination as to the applicant's eligibility to stand the written bar examination or to be licensed by comity. The Panel may grant the application, deny the application, or refer it to the full Board for a de novo hearing. The applicant will be notified in writing of the Panel's determination. In the

event of an adverse determination by the Panel, the applicant may request a hearing de novo before the full Board by giving written notice to the secretary at the offices of the Board within ten (10) days following receipt of the Panel's determination. Failure to file such notice in the manner and within the time stated shall operate as a waiver of the right of the applicant to request a hearing de novo before the full Board and shall result in the determination of the Panel becoming final.

(3) The Board or a Panel of the Board may require an applicant to make more than one appearance before the Board or Panel, to furnish information and documents as it may reasonably require, and to submit to reasonable physical or mental examinations, all at the applicant's expense, pertaining to the moral character or general fitness of the applicant to be licensed to practice law in North Carolina.

.1204 CONTINUANCES; MOTIONS FOR SUCH

Continuances, adjournments and like dispositions will be granted to a party only in compelling circumstances especially when one such disposition has been previously requested by and granted to that party. Motions for continuance should be made to the secretary of the Board and will be granted or denied by the chairman of the Board.

.1205 SUBPOENAS

(1) The Board shall have the power to subpoena and to summon

and examine witnesses under oath and to compel their attendance and the production of books, papers and other documents and writings deemed by it to be necessary or material to the hearing as set forth in G.S. 84-24.
(2) The secretary of the Board is delegated the power to issue subpoenas in the Board's name.

.1206 DEPOSITIONS AND DISCOVERY

(1) A deposition may be used in evidence when taken in compliance with the N. C. Rules of Civil Procedure, G.S. 1A-I. The Board may also allow the use of depositions or written interrogatories for the purpose of discovery or for the use as evidence in the hearing or for both purposes pursuant to the N. C. Rules of Civil Procedure.

(2) Any party or the Board may submit sworn affidavits as evidence to be considered by the Board in a Board hearing. The Board will take under consideration sworn affidavits presented to the Board by persons desiring to protest an applicant's admission to the North Carolina Bar.

.1207 REOPENING OF A CASE

After a final decision has been reached by the Board in any matter, a party may petition the Board to reopen or reconsider a case. Petitions will not be granted except when petitioner can show that the reasons for reopening or reconsidering the case are to introduce newly discovered evidence which was not presented at the initial hearing because of some justifiable, excusable or

unavoidable circumstances and that fairness and justice require reopening or reconsidering the case. The decision made by the Board will he in writing and a copy will be sent to the petitioner or the petitioner's attorney and made a part of the record of the hearing.

SECTION . 1300-LICENSES

.1301 INTERIM PERMIT FOR COMITY APPLICANTS

No license shall be issued to any comity applicant for admission under rule .0502 of this Chapter except at the time of the annual licensing of the general applicants provided, the Board may at any other time, in its discretion, grant an interim permission to such comity applicants to practice law until license shall be issued.

.1302 LICENSES FOR GENERAL APPLICANTS

Upon compliance with the rules of the Board, and all orders of the Board, the secretary, upon order of the Board, shall issue a license to practice law North Carolina to each applicant as may be designated by the Board in the form and manner as may be prescribed by the Board, and at such times as prescribed by the Board.

SECTION .1400-JUDICIAL REVIEW

.1401 APPEALS

A general applicant may appeal from an adverse ruling or

determination by the Board as to the applicant's eligibility to take the written examination. After a general applicant has successfully passed, the written examination, the applicant may appeal from any adverse ruling or determination withholding the applicant's license to practice law. A comity applicant may appeal from an adverse ruling of the Board of Law Examiners denying the applicant's application to the North Carolina Bar by comity for failure to meet any of the requirements of Rule .0502 of this Chapter.

.1402 NOTICE OF APPEAL

Notice of appeal shall be given, in writing within twenty (20) days after notice of such ruling or determination and written exceptions to the ruling or determination filed with the secretary, which exceptions shall state the grounds of objection to such ruling or determination. Failure to file such notice of appeal in the manner and within the time stated shall operate as a waiver of the right to appeal and shall result in the decision of the Board becoming final.

1403 RECORD TO BE FILED

Within sixty days after receipt of the notice of appeal, and after the applicant has paid the cost of preparing the record, the Secretary shall prepare, certify, and file with the clerk of the Superior Court of Wake County the record of the case, comprising:

(1) the application and supporting documents or papers filed by the applicant with the Board;

(2) a complete transcription of the testimony when taken at the hearing;

(3) copies of all pertinent documents and other written evidence introduced at the hearing;

(4) a copy of the decision of the Board; and

(5) a copy of the notice of appeal containing the exceptions filed to the decision.

With the permission of the court, the record may be shortened by stipulation of all parties to the review proceedings. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for such additional costs as may be occasioned by the refusal. The court may require or permit subsequent corrections or additions to the record when deemed desirable.

.1404 WAKE COUNTY SUPERIOR COURT

Such appeal shall lie to the Superior Court of Wake County and shall be heard by the presiding judge or resident judge, without a jury, who may hear oral arguments and receive written briefs, but no evidence not offered at the hearing shall be taken except that in cases of alleged omissions or errors in the record. Testimony thereon may be taken by the court. The findings of fact by the Board when supported by competent evidence, shall be conclusive and binding upon the court. The court may affirm, reverse or remand the case for further proceedings. If the court reverses or remands for further proceedings the decision of the Board, the judge shall set out in writing, which writing shall become a part of

the record, the reasons for such reversal of remand.

.1405 NORTH CAROLINA SUPREME COURT

Any party to the review proceeding, including the Board, may appeal to the Supreme Court from the decision of the superior court. No appeal bond shall be required of the Board.

After examining the foregoing amendments to the Rules Governing Admission to Practice of Law as adopted be the Council of the North Carolina State Bar, it is my opinion that the same is not inconsistent with Article 4, Chapter 84 of the General Statutes.

This the 76th day of July, 1990.
James G. Exum, Jr.
Chief Justice

Upon the foregoing certificate, it is ordered that the foregoing amendments to the Rules Governing Admission to Practice of Law be spread upon the Minutes of the Supreme Court and that they be published in the forthcoming volume of the Reports as provided by the Act incorporating the North Carolina State Bar.

This the 26th day of July, 1990.
Wichard, J.
For the Court

APPENDIX C

[North Carolina Board Of Law Examiners Notice of De Novo Hearing, October 5, 1992]

NORTH CAROLINA
WAKE COUNTY
BEFORE THE BOARD OF LAW EXAMINERS
OF THE STATE OF NORTH CAROLINA

Notice of Hearing

In the Matter of:

DAVID ERNEST GOLIA-PALADIN
NOTICE OF HEARING
Applicant to Stand the North Carolina Bar Examination

TO: David Ernest Golia-Paladin, and his attorney,
Thomas F. Loflin III

Notice is hereby given, pursuant to N.C.G.S. 84-24 and the Rules Governing Admission to the Practice of Law in the State of North Carolina, that a formal hearing will be conducted by the Board of Law Examiners of the State of North Carolina commencing on Thursday, October 22, 1992, at 9:30 a.m., or as soon thereafter as possible, in the Board's offices located in the North Carolina State Bar Building, 208 Fayetteville Street Mall, Raleigh, North Carolina.

The purpose of this hearing is for the Board to give consideration to David Ernest Golia-Paladin's application to be admitted to the North Carolina Bar by comity. The applicant has the burden of satisfying the Board that he has met all of the requirements of Rule. 0502 of the Rules Governing Admission to the Practice of Law in the State of North Carolina in order to be licensed by comity. In this connection, the applicant will be required to give sworn testimony in support of his application.

The applicant should be prepared to substantiate that he has been duly licensed to practice law in a state, territory of the United States, or the District of Columbia having comity with North Carolina and that in such state, or territory of the United States, or the District of Columbia, he has been for at least four out of the last six years, actively and substantially, engaged in the practice of law.

The applicant will also be questioned about the litigation entitled Anne Galante et al v. David Golia Paladin.

While the Board will make specific inquiry about the matter referred to above, please be advised that inquiry can also be made about the answers to any questions set out in the application and such could lead to additional hearings. The applicant has the right to be represented by counsel, and to offer evidence concerning this matter.

This the 5th day of October, 1992.
/s/FRED P. PARKER III
Executive Director

Board of Law Examiners of N.C.
208 Fayetteville Street Mall
Post Office, Box 2946
Raleigh, North Carolina 27602
Telephone: (919) 828-4886

Attorney for the Board of Law Examiners:

Mr. John R. Maddrey
Post Office Box 25201
Raleigh, North Carolina 27611
(919) 733-4185

CERTIFIED MAIL # P 067 715 777
Return Receipt Requested

APPENDIX D

[New York Zoning Case: Complaint, Answer, Discontinuance, And Closing Letter, Dated: January 7, 1988, February 18, 1988, March 18, 1988, and March 21, 1988 respectively]

At Special Term Part II of the Supreme Court of the State of New York, held in and for the County of Nassau, at the Courthouse, 100 Supreme Court Drive, Mineola, New York, on the 7th day of January, 1988.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

ANNE GALANTE, SCOTT FAIRGRIEVE, LOUIS SANTOSUS, JR., FRANK PEWARSKI, JR. and ROBERT W. HINCK, constituting the BOARD OF TRUSTEES of the INCORPORATED VILLAGE OF MINEOLA,

Plaintiff

Order to Show Cause
Index No. 259/88

-against-

DAVID GOLIA PALADIN,

Defendant

PRESENT: Hon. Alfred A. Oppido, Justice.

Upon reading and filing the annexed affidavits of RICHARD

DeVOE and EDGAR HANSEN, sworn to on the 30th day of December, 1987, and the 6th day of January, 1988, respectively, and the annexed complaint in this action, duly verified by the plaintiff the 30th day of December, 1987,

Let the defendant show cause before Justice Robbins of this court at IAS part 10 thereof, to be held at the Courthouse, 100 Supreme Court Drive, Mineola, New York on the 29th day of January, 1988, at 9:30 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard, why an order should not be made and entered herein restraining and enjoining the defendant, pending the determination of the issues in this action, from using or permitting the use of the cellar in defendant's premises at 225 Horton Highway, Mineola, New York as living or sleeping quarters;

Sufficient cause appearing therefor, let personal service of a conformed copy of this order and the papers upon which it is based the summons and complaint upon the defendant, on or before the 22nd Day of January, 1988, be deemed good and sufficient service thereof.

Signed this 7th day of January, 1988 at Mineola, New York.

ENTER,

/s/A.A.O
A.A.O
Justice of the Supreme Court

D-2

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

ANNE GALANTE, SCOTT FAIRGRIEVE, LOUIS SANTOSUS, JR., FRANK PEWARSKI , JR. and ROBERT W. HINCK, constituting the BOARD OF TRUSTEES of the INCORPORATED VILLAGE OF MINEOLA,

PLAINTIFF

AFFIDAVIT

-against-

DAVID GOLIA PALADIN

DEFENDANT.

State of New York
County of Nassau

RICHARD M. DEVOE, being duly sworn, deposes and says:

1. I am the Village Clerk of the Incorporated Village of Mineola, the Plaintiff herein and I make this affidavit in support of Plaintiff's request for preliminary injunctive relief restraining defendant from using, or permitting the use of, the cellar in the below-described premises for living or sleeping quarters in violation of Section 60-3 of the Zoning Code of the Incorporated Village of Mineola.

2. As indicated in the verified complaint herein, defendant is the owner of the premises located at 225 Horton Highway, Mineola, New York Said property is located within the Incorporated Village of Mineola and is governed by the Village Zoning Code.

3. Section 60-3 of the Zoning Code provides that "a cellar shall not be used or occupied as living or sleeping quarters."

4. Such use of a cellar is prohibited since cellars provide limited egress for emergency escape; in like manner, cellars provide limited ingress for fire fighters and other emergency personnel. Moreover, persons sleeping in cellars are in dangerous proximity to oil burners, furnaces, etc.

5. As shown in the accompanying affidavit of Edgar Hansen, his inspection of defendant's property has demonstrated that the cellar therein is being used as living/sleeping quarters in violation of Section 60-3.

6. Pursuant to Section 60-102 of the Zoning Code, the Board of Trustees is charged with enforcement of the said Code. In particular, that Section provides: "the Board of Trustees shall have the right to maintain legal action in the nature of injunction or otherwise to abate or restrain any violation of this ordinance.

7. The use of defendant's cellar as living/sleeping quarters in violation of the code has created a hazard to life and property within the Village of Mineola, which hazard shall continue unless this Court orders its cessation.

8. No previous application for this or similar relief has been made before this or any other Court.

WHEREFORE, plaintiff respectfully requests that this

Court order that defendant be enjoined and restrained from continuing said use of the cellar as living/sleeping quarters and for such other and different relief as to the Court may seem just and proper.

/s/ RICHARD M. DEVOE
Richard M. Devoe

Sworn to before me this
30 day of December, 1987.

NOTARY PUBLIC
SEAL

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU
ANNE GALANTE, SCOTT FAIRGRIEVE, LOUIS SANTOSUS, JR., FRANK PEWARSKI, JR. and ROBERT W. HINCK, constituting the BOARD OF TRUSTEES OF THE INCORPORATED VILLAGE OF MINEOLA,
PLAINTIFF

Index No.
AFFIDAVIT

DAVID GOLIA PALADIN,
Defendant

STATE OF NEW YORK
COUNTY OF NASSAU: ss:

EDGAR HANSEN, being duly sworn, deposes and says:

1. I am a private investigator duly licensed by the State of New York.

2. At the request of the Board of Trustees of the Incorporated Village of Mineola, I conducted an investigation of the premises known as 225 Horton Highway, Mineola, New York on December 16, 1987. I was accompanied by Mineola Housing Inspector James McKillop and William Abramo, a licensed private investigator.

3. The premises contain a "cellar" as that term is defined in Section 60-3 of the Mineola Zoning Code.

4. We were admitted to the premises by the owner, Mr. Paladin

who advised us that he resides in a cellar apartment in the premises.

5. The photos annexed hereto were taken by me during our visit. These photos demonstrate that the cellar is being used as living or sleeping quarters.

6. The records of the Nassau County Clerk indicate that the owner of the premises is David Golia Paladin.

/s/ EDGAR HANSEN
Edgar Hansen

Sworn to before me this day 6th day of December, 1987.

NOTARY PUBLIC

C 104-Summons without Notice, Blank Court 9-73
COPYRIGHT 1973 BY JULIUS BLUMBERG, INC., LAW BLANK PUBLISHERS
SUPREME COURT OF THE STATE OF NEW YORK INDEX No.
COUNTY OF NASSAU
Plaintiff designates Nassau County as the place of trial.
The basis of the venue is defendant's residence

ANNE GALANTE ET AL Plaintiff

against SUMMONS

DAVID GOLIA PALADIN Defendant

Plaintiff resides at 171 Jericho Turnpike
Mineola, New York 11501
Ccounty of Nassau

To the above named Defendant

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with the summons, to serve a notice of appearance, on the Plaintiff's Attorney(s) within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated,
Defendant's address:
225 Horton Highway
Mineola, New York

Minerva Moloughney & D'Agostino, P.C.
Attorney(s) for Plaintiff
Office and Post Office Address
107 South Central Avenue
Valley Stream, New York 11580

SUPREME COURT OF THE STATE OF NEW YORK COUNTY OF NASSAU

ANNE GALANTE, SCOTT FAIRGRIEVE, LOUIS SANTOSUS, JR., FRANK PEWARSKI, JR. and ROBERT W. HINCK, constituting the BOARD OF TRUSTEES of the INCORPORATED VILLAGE of MINEOLA,

Plaintiff

AGAINST VERIFIED COMPLAINT

DAVID GOLIA PALADIN,

Defendant

1. Plaintiff BOARD OF TRUSTEES, by its attorneys, MINERVA , MOLOUGHNEY & D'AGOSTINO, P.C., as and for its verified complaint herein, alleges:

1. Plaintiff is the BOARD OF TRUSTEES of the INCORPORATED VILLAGE OF MINEOLA.

2. Pursuant to Section 60-102 of the Zoning Code of the Incorporated Village of Mineola, Plaintiff is charged with enforcing the provisions of said Code.

3. Upon information and belief, defendant is the owner of certain residential real property situate within the Village of Mineola and known as 225 Horton Highway.

4. Defendant's use of said real property is governed by the

provisions of the said Zoning Code.

5. Section 60-3 of the said Zoning Code provides, in pertinent part: "CELLAR -- That portion of a building with half or more of its floor-to-ceiling height below the average level of the adjoining ground. A "cellar" shall not be used or occupied as living or sleeping quarters."

6. Upon information and belief, defendant's residential real property contains a "cellar" as that term is defined in Section 60-3.

7. Upon information and belief, defendant uses, or permits the use of, said "cellar" as living or sleeping quarters.

8. Said use is in violation of the Zoning Code.

9. Section 60-102 of the Zoning Code provides, in pertinent part: "The Board of Trustees shall have the right to maintain legal action in the nature of injunction or otherwise to abate or restrain any violation of this ordinance."

10. Upon information and belief, defendant's use of the "cellar" as living or sleeping quarters in violation of Section 60-3 creates a hazard to life and property within the Incorporated Village of Mineola, which hazard shall continue unless this Court orders its cessation.

11. Plaintiff has no adequate remedy at law.

WHEREFORE, Plaintiff demands judgment that

defendant's use of the "cellar" as living or sleeping quarters is unlawful; that defendant be enjoined and restrained from continuing said use; and for such other and different relief as to this Court may seem just and proper.

Dated: Valley Stream, New York
December 28, 1987

MINERVA, MOLOUGHNEY & D'AGOSTINO PC
Attorneys for Plaintiff 107 South Central Avenue Valley Stream, New York 1580 (516) 872-0909
VERIFICATION
State of New York)
ss: County of Nassau)
RICHARD M. DeVOE, being duly sworn, deposes and says:

1. I am the Village Clerk of the Incorporated Village of Mineola, the plaintiff in the within action.

2. I have read the foregoing complaint and understand its contents.

3. The same is true to my own knowledge, except as to matters therein stated to be alleged upon information and belief, and as to those matters, I believe it to be true.

/s/ RICHARD M. DEVOE
Sworn to before me this
30 day of December, 1987
NOTARY PUBLIC SEAL

COUNTY OF NASSAU SUPREME COURT OF THE STATE OF NEW YORK

Index No. 289/88 ANNE GALANTE, SCOTT FAIRGRIEVE, LOUIS SANTOSUS, JR., FRANK PEWARSKI, JR., and ROBERT W. HINCK, constituting the BOARD OF TRUSTEES of the INCORPORATED VILLAGE OF MINEOLA,

PLAINTIFFS, VERIFIED COMPLAINT

-Against-

DAVID GOLIA PALADIN,

Defendant

The defendant, by his attorneys, RAMO, NASHAK & BROWN, answers the plaintiffs' verified complaint, alleges as follows:

1. Denies knowledge or information sufficient to form a belief as to the allegations contained in Paragraphs 1,2,4,5 and 9.

2. Denies each and every allegation contained in Paragraphs 6, 7, 8, 10 and 11.

FIRST AFFIRMATIVE DEFENSE

3. The search conducted of the defendant's premises at 225 Horton Highway, Mineola, New York was conducted in violation of the Constitution of the United States and of the State of New York.

4. Neither the plaintiffs nor their agents employees, or subcontractors obtained a search warrant permitting the search

conducted.

5. Neither the plaintiffs nor their agents, employees or subcontractors obtained an order persisting discovery and inspection of the premises prior to the inspection.

6. Entry upon the defendant's premises was achieved by fraud and deceit.

7. The defendant's consent to an inspection we obtained by fraud and deceit and hence not freely given.

8. The representatives of the plaintiff declared to the defendant that they had cone to inspect the boiler.

9. The true purpose of the attempt at inspection was not to inspect the boiler.

11. The defendant's consent was, at best, limited to an inspection of the boiler.

12. The defendant never gave anyone permission to enter into any portion of the lower level of the premises other than the boiler room.

SECOND AFFIRMATIVE DEFENSE

13. The plaintiffs' action is couched in equity.

14. The plaintiffs do not come to this action with clean

hands.

15. The acts complained of in the First

Affirmative defense above are hereby incorporated herein. Those acts deprive the plaintiffs of any basis for the award of equitable relief.

THIRD AFFIRMATIVE DEFENSE

16. Throughout the years the defendant has made improvements to the premises and obtained building permits for same.

17. At no time was this, or any other violation of Village Code ever asserted against the defendant.

18. Upon information and belief, the Village had the right to inspect at the time the building permits were issued, but declined to do so.

19. The plaintiffs should be equitably estopped from now alleging a violation of the Code.

WHEREFORE, the defendant demands judgment dismissing the complaint in its entirety, together with the costs and disbursements of this action and the sum of $5,000.00 representing reasonable counsel fees incurred in the defense of this action.

Ramo, Nashak & Brown, Attorneys for Defendant
75-19 Myrtle Avenue,Glendale, N.Y. 11385
(718) 386-4345

STATE OF NORTH CAROLINA
COUNTY OF ORANGE SS.:

, being duly sworn, deposes and says:

Deponent is the defendant in the within action deponent has read the foregoing ANSWER and knows the contents thereof; that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters, deponent believes it to be true.

Sworn to before me this 18 day of Feb, 1988.
SEAL ORANGE COUNTY NORTH CAROLINA
My Commission Expires January 23, 1991

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

ANNE GALANTE, et al
Plaintiffs, AFFIDAVIT IN OPPOSITION
against -
DAVID GOLIA PALADIN
Defendant.

STATE OF NORTH CAROLINA COUNTY OF
DAVID GOLIA PALADIN, being duly sworn, deposes and says:

1. I am the defendant in the above captioned matter. I reside at 109 Mimosa Drive. Chapel Hill, North Carolina.

2. I make this affidavit In opposition to the relief requested in the order to show cause obtained by the plaintiffs a preliminary injunction.

HAZARDS TO THE VILLAGE OF MINEOLA

3. The affidavit of RICHARD M. DEVOE, submitted in support of the order to show cause states (Par. 7) that my alleged use of the cellar/basement at premises 225 Horton Highway, Mineola, New York creates a hazard to life and property within the Village of Mineola.

4. This bald statement of MR. DEVOE is merely a conclusion unsubstantiated by fact. No where in his affidavit does he demonstrate the alleged hazard from my alleged use of the

cellar/basement area of the house. It is my position that the allegation is left unsubstantiated is because it cannot be substantiated, but is merely a conclusion inserted in the affidavit out of a necessity to show and legitimize the allegations of the plaintiffs.

5. My verified answer, submitted herewith, denies that I use, or permit to be used, the cellar/basement area of the premises as "living/sleeping quarters".

THE PURPOSE OF A PRELIMINARY INJUNCTION IS TO PRESERVE THE STATUS QUO

6. My attorney has advised me that the purpose of a preliminary injunction Is to preserve the status quo of a particular situation pending trial. I am further advised that a preliminary injunction is a drastic remedy which can only be granted in the face of irreparable damage.

7. The temporary injunction sought by the plaintiffs would, if granted, might result in a change in the status quo, If I were using the basement/cellar as living or sleeping quarters. It would also result in the plaintiffs obtaining as pendente lite relief, the very goal they seek to obtain at trial. Counsel has informed se that preliminary injunctions cannot be granted where the effect would be to achieve the main objective of the action.

THE DECEMBER 16, 1987 SEARCH

8. On December 16, 1987 I was present at the premises. I

am currently a resident of North Carolina but was in New York on business at that time. It is my policy when I am in town to visit the premises for the purpose of inspecting same and determining if repairs are required.

9. While I was present in the dwelling, the doorbell rang. As I was present I answered the door. Upon opening the door I observed at least three individuals. One of the individuals stated that he was there from the village to "inspect the boiler". To satisfy myself as to the nature of the request, I sated "You are here to inspect the boiler?" The response was "yes".

10. I then permitted the gentlemen to enter the premises. It was my impression that only he, the speaker, would be entering. I was surprised to see, upon turning around, that the other gentlemen had entered as well. Once in the basement/cellar, none of the gentlemen paid the slightest attention to the boiler, but instead commenced roaming throughout the entire basement/cellar area of the premises. I then stated "I thought you guys were here to inspect the boiler?" The reply was that yes, the boiler seemed to be okay. Meanwhile, no one entered the room where the boiler is located.

11. To the best of my knowledge, these gentlemen did not have a warrant, nor an order permitting discover and inspection from the Supreme Court. My consent to the search was obtained through deception and fraud, and in any event, limited to the purposes of inspecting the boiler. My attorney advises me that this search was conducted in violation of the U.S. and N.Y. Constitutions.

12. It my intent to seek to have the fruits of this search suppressed at, or prior to, the trial of this matter.

13. To grant a preliminary injunction based on the fruits of a search that, in all likelihood is tainted, would be an abuse of the court's discretion. This particularly true when the relief requested is couched in equity and the very events surrounding the search deprive the plaintiffs of any claim to coming to this action with clean hands.

CELLAR OR BASEMENT?

14. Both Mr. DeVoe and Mr. Hansen allege that the premises contains a "cellar" as defined in the Village Code. Mr. DeVoe, upon information and belief, was not present when the inspection was made, and nothing contained in his affidavit indicates that he is qualified to distinguish between a "cellar" and a "basement".

15. Mr. HANSEN apparently was present at the inspection. According to his affidavit he is licensed private investigator. There is nothing in his affidavit that would lead one to believe that he is qualified to distinguish between a "basement" and a "cellar".

16. I do not concede that the premises contains only a "cellar".

17. The moving affidavits thus do not, on their face, demonstrate that the premises contains only a "cellar", nor do they state that how the conclusion was reached that the lower level of the premises is, in fact, a "Cellar" as defined by the Code.

THE PHOTOGRAPHS

18. I gave no one permission to photograph any portion of the interior or exterior of the premises.

19. There is much furniture in the premises owned by me, awaiting my permanent return to the New York area. It is the result of the consolidation of two households: mine and my wife's. The bed pictured is one piece of this, furniture. It is covered to prevent damage by dust, etc.

20. There are three electric meters at the premises. Two are for the apartments, and the remaining one I refer to as the "landlord's" meter. All of the electricity used in lighting the halls and the exterior is metered through this meter as is the electricity used in running the heating system. The bill for this third meter is paid for by me. It would be unfair to expect my tenants to pay for this power.

STATEMENTS ALLEGEDLY MADE BY ME

21. I never stated that I lived at the premises. I did state that the premises is "my house". I do not reside at the premises, I reside in Chapel Hill, North Carolina.

WHEREFORE, I respectfully request that the relief demanded in the order to show cause obtained by
the plaintiffs be in all respects denied.
s/DAVID GOLIA PALADIN
NOTARY SEAL Sworn to before me this 18 day of February, 1988

SUPREME CONDUCT OF THE STATE OF NEW YORK
COUNTY OF NASSAU
ANNE GALANTE et al
Plaintiff(s) against
DAVID GOLIA PALADIN
Defendant(s)

STIPULATION DISCONTINUING ACTION

IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned, the attorneys of record for all the parties to the above entitled action, that whereas no party hereto is an infant or incompetent person for whom a committee has been appointed and no person not a party has an interest in the subject matter of the action, the above entitled action be, and the; same hereby is discontinued, without costs to either party as against the other. This stipulation may be filed without further notice with the Clerk of the Court.

Dated: March 18, 1988 .

/s/GREGORY J. BROWN
Ramo, Nashak & Brown,
Attorneys for Defendant

ROBERT F. O'CONNOR Minerva Mologhney & D'Agostino
Attorney(s) for Plaintiffs

March 21, 1988

David Golia Paladin, Esq.
109 Mimosa Drive
Chapel Hill, North Carolina 27514

Dear Mr.Paladin:

The Village agrees that the basement is a basement and not a cellar. The action has been discontinued. I will pay the final bill and after this has been done I will forward you a check for the difference.

Very truly yours,

/s/GREGORY J. BROWN
Gregory J. Brown for George J. Nashak, Jr.

APPENDIX E

[North Carolina Board Of Law Examiners De Novo Hearing Decision
And Order, January 25, 1993]

NORTH CAROLINA
WAKE COUNTY

THE BOARD OF LAW EXAMINERS
OF THE STATE OF NORTH CAROLINA

In the Matter of:

DAVID ERNEST GOLIA-PALADIN
Applicant to the North Carolina Bar by Comity

O R D E R

This cause came on to be heard before the Board of Law Examiners of the State of North Carolina (hereinafter referred to as the "Board") on October 22, 1992, in Raleigh, North Carolina, for the purpose of considering the Application filed by DAVID ERNEST GOLIA-PALADIN (hereinafter referred to as the "Applicant") to be admitted to the North Carolina Bar by comity. The Applicant appeared when his case was called, acknowledged receipt of the Board's Notice of Hearing dated October 5, 1992, and was represented by attorney Thomas F. Loflin of Durham. The Board was represented by Assistant Attorney General John F. Maddrey of the North Carolina Department of Justice. Board members Walter F. Brinkley and Karl H. Hill, Jr. were not present during the Applicant's hearing and did not participate in the Board's decision concerning his Application.

Previously, in an Order entered on December 10, 1986, the Board found that the Applicant had failed to satisfy his burden of proving that he possesses the qualifications of character and general fitness requisite for an attorney and counselor at law and that he is of such good moral character as to be entitled to the high regard and confidence of the public, and that he had failed to show that he met the practice requirements for comity admission to the Bar of North Carolina. The Board's December 10, 1986 Order denying the Applicant's 1985 comity admission application was ultimately affirmed on appeal. In re Golia-Paladin, 327 N.C. 132, 393 S.E.2d 799 (1990). Based on the Applicant's answers to the questions on his Application, the attachments and amendments to the Application, the sworn testimony of the Applicant at the October 22, 1992 Hearing, the sworn testimony of the other witness that appeared at the October 22, 1992 Hearing, and the exhibits submitted by the Applicant in support of his Application, the Board makes the following FINDINGS OF FACT:

1. On May 17, 1991, the Applicant filed with the Board a new "Application for License to Practice Law in North Carolina by Comity" (hereinafter referred to as the "Application").

2. The Applicant maintains residences both in Mineola, New York, and Chapel Hill, North Carolina. The Applicant based his comity application on his legal practice in the State of New York.

3. The Applicant graduated from the Tulane University School of Law in 1973, and was admitted to practice in New York in November of 1978.

4. In response to Question 30 of the Application, the Applicant indicated that to the best of his memory he had signed up

for the California bar examination at least 15 or 16 times and had actually taken the California bar examination ten or twelve times, more or less. Information provided to the Board by California bar officials at the request of the Applicant showed that between July of 1973 and July of 1991 the Applicant had registered for the California bar examination on 24 occasions and unsuccessfully took that examination 18 times. The Applicant further testified that he had taken the California bar examination in July of 1992 with the results of that test still pending.

5. In further response to Question 30 of the Application, the Applicant indicated that he had sat for the New Mexico bar examination in 1973. This disclosure was inconsistent with the Applicant's prior testimony under oath to the Board on October 23, 1986, when he stated that the first time he took the bar examination in any state was in California in 1974 or 1975.

6. Throughout the period from 1985 to 1991 the Applicant was self-employed in a law practice which primarily involved the representation of indigent criminal defendants in court proceedings in Manhattan and in Nassau County. He was a member of the "18B Panel" in New York County and Nassau County,- under which he was assigned to represent indigent defendants in felony arraignments, trials and appeals.

7. Throughout the period from 1985 to 1991 the Applicant maintained a law office in the building he owned located at 225 Horton Highway in Mineola, New York. In addition to his law office on the main floor, the building contains two tenant-occupied apartments and a basement living quarters used by the Applicant.

8. In response to Question 6 of the Application, the Applicant indicated that he has maintained a residence from June of 1978 to the present at 225 Horton Highway. In an Amendment to

his Application filed on October 22, 1992, the date of his hearing, the Applicant excepted the period from December 17, 1987, to March 14, 1988, from the time he claims he maintained a residence in Mineola.

9. In response to Question 17 of the Application, the Applicant attached various documents from a lawsuit filed in the Supreme Court of the State of New York for Nassau County on December 28, 1987, entitled Galante v. Paladin. The plaintiffs in this action were the Board of Trustees of the Incorporated Village of Mineola and the defendant was the Applicant. The Complaint alleged that the defendant, as owner of the dwelling located at 225 Horton Highway, allowed the cellar to be used or occupied as a living or sleeping quarters in violation of the zoning code.

10. In response to the Complaint, the Applicant, by his attorney, filed a "Verified Answer" and an "Affidavit in Opposition," both of which were attested to under oath by the Applicant on February 18, 1988. In addition to contending that the room in question was a "basement" and not a "cellar," the Applicant's defense included the legal position that he was not a resident of the premises at issue. The Applicant made numerous statements in these documents disclaiming the use of the premises as a residence.

A. The Applicant's Verified Answer denied in its entirety paragraph 7 of the Complaint, which alleged "upon information and belief, defendant uses, or permits the use of, said 'cellar' as living or sleeping quarters."

B. In paragraph 5 of the Affidavit, the Applicant reiterated that his verified answer denied that he "use[d], or permitted to be used the cellar/basement area of the premises as 'living/sleeping quarters.'"

C. In paragraph 8 of the Affidavit, the Applicant states that he is "currently a resident of North Carolina, that while he was present at the premises on December 16, 1987, when a village housing inspector and two other persons asked to enter, he "was in New York on business at that time," and that he was "visit[ing] the premises for the purpose of inspecting same and determing if repairs [we]re required."

D. In paragraph 19 of his Affidavit, the Applicant states that the bed pictured in a photograph taken on December 16, 1987, was "Covered to prevent damage by dust, etc." while it was being stored "awaiting [his] permanent return to the New York area."

E. In paragraph 21 of his Affidavit, the Applicant indicates that "I never stated that I lived at the premises. I did state that the premises is 'my house.' I do not reside at the premises, I reside in Chapel Hill North Carolina."

11. A "Stipulation Discontinuing Action" was entered in the zoning code lawsuit on March 18, 1988. The Applicant returned to Mineola and resumed the use of the basement of the premises located at 225 Horton Highway as his residence on March 14, 1988, four days before the action was dismissed.

12. The Applicant's various statements in his Verified Answer and his Affidavit of February 18, 1988, in which he denies using the premises at 225 Horton Highway in Mineola, New York, as his residence were misleading and untruthful. The Applicant has continued to be misleading and untruthful by maintaining before the Board that the former statements were accurate and truthful. The Board rejects the Applicant's claim that his responses were permitted or excused by the inartful manner in which the Complaint against him was drafted or by the mixed use of present and past tense in the documents at issue, and that his Answer and

Affidavit represent "good lawyering." The Board further rejects the Applicant's suggestion that he should not be held accountable for the statements contained in the Verified Answer and the Affidavit because such documents were drafted by his attorney and were prepared in opposition to a request for injunctive relief. The Applicant personally verified both documents under oath and is accountable for what they say as well as what they imply.

13. The Applicant's statements set forth in Paragraph 10 above display a lack of fairness and candor with the Court and had the tendency and capacity to deceive. The Applicant has continued to display a lack of fairness and candor by maintaining before the Board that the former statements were not deceptive. No fair reading of the Affidavit comports with the Applicant is admitted actual use of the basement portion of the dwelling at 225 Horton Highway as his New York residence for the period of time from June of 1978 until December of 1987. The evidence shows that the Applicant did nothing more to interrupt or terminate his New York residency than to leave Mineola and return to his Chapel Hill residence on December 18th consistent with his pre-existing plans to spend the holidays in North Carolina. The Applicant's actions demonstrate the convenient adoption of a temporary position for self-serving purposes in a legal matter rather than a genuine intention to terminate permanently his New York residence.

14. The Applicant's Amendment to his Application filed on October 22, 1992, purporting to exclude the period of December 17, 1987, to March 14, 1988, from the time he resided at 225 Horton Highway in Mineola, New York, displays a lack of fairness and candor with the Board. The Amendment was submitted after the Applicant had been questioned about the lawsuit by the Board's Hearing Panel on September 10, 1992, and after he had received the

Board's Notice of Hearing dated October 5, 1992, specifically informing the Applicant that he would be questioned about the litigation. The Applicant's conduct amounts to an after-the-fact attempt to make a selective and technical disclaimer of his residence in New York to serve a particular purpose.

15. In an Amendment dated January 2, 1992, the Applicant's attorney submitted a supplement to the answer to Question 17 on the Application by providing the Board a copy of a Complaint filed in the United States District Court for the Southern District of New York on October 31, 1991, entitled Paladin v. Finnerty, et al. The matter is a purported class action lawsuit brought by the Applicant which requests that the court dismiss two letters of caution entered against him by the New York State Grievance Committee for the Second Judicial Department, enter a declaratory judgment that the attorney misconduct provisions of the various judicial departments in New York are unconstitutional, and enter a mandatory injunction requiring formulation of a statewide attorney disciplinary authority in New York.

16. The Applicant provided no additional information or documents to the Board concerning this lawsuit prior to his Hearing even though the defendants had filed a motion to dismiss for improper venue, the Applicant had entered into a stipulation with the office of the Attorney General for the State of New York to drop all parties other than those from the Second Judicial Department, and the Federal Court had entered an order transferring the case from the Southern District to the Eastern District. The Board explicitly rejects the Applicant's claim that he was excused from providing such additional information and

documents because nothing substantive has happened in the case, and finds that the Applicant has willfully failed to provide to the Board material documents within the scope of question 17 of the Application.

17. The Board finds that the Applicant's conduct demonstrates a lack of fairness and candor in dealing with the Board. Specifically, the matters discussed in paragraphs 4, 5, 15 and 16 indicate a failure to fully disclose material matters specifically within the scope of questions on his Application. Furthermore, the matters discussed in paragraphs 10 ,11, 12, 13 and 14 demonstrates the absence of good faith and fair dealing with both the Supreme Court of the State of New York and the Board. The Board finds that the Applicant made numerous untruthful statements about his occupation and use of his Mineola residence and that the effect of these statements was to mislead and deceive the Court and the Board.

BASED ON THE FOREGOING FINDINGS OF FACT, the Board makes the following CONCLUSIONS OF LAW:

1. The Applicant's untruthful and misleading material statements under oath in legal documents filed in the Supreme Court of the State of New York, which were compounded by his untruthful and misleading sworn testimony before the Board, have a significant bearing upon the Applicant's character and fitness.

2. The Applicant has failed to satisfy the Board that he possesses the qualifications of character and general fitness requisite for an attorney and counselor at law and that he is of such

good moral character as to be entitled to the high regard and confidence of the public.

3. The Applicant's Application for License to Practice Law in North Carolina by Comity. should be denied.

IT IS THEREFORE ORDERED:

1. That the application of DAVID ERNEST GOLIA-PALADIN for a license to practice law in the State of North Carolina by comity be, and is hereby, DENIED.

Entered this the 25 day of January, 1993, by direction of the Board of Law Examiners of the State of North Carolina.

/s/WALTER F. BRINKLEY
Walter F. Brinkley
Chairman

APPENDIX F

[North Carolina Board Of Law Examiners Bar Application Question Number 30, Bar Exam History, February 12, 1991; Letter From North Carolina Board Of Law Examiners Requesting Bar Exam Dates And Locations, December 19, 1991; Letter To California Requesting Exam Information, December 30, 1991; Handwritten Dates From California Bar, January 6, 1992]

30. Have you ever applied to take a bar examination or any attorney's examination or for admission to practice law in this or any other state, jurisdiction, or country? X YES ___ NO

If so, PLEASE ATTACH A COPY OF EACH APPLICATION other than those filed in this state and give the name of the state, jurisdiction, the date of each such examination and state whether successful or unsuccessful. If successful, state whether you were admitted, giving the name of the court by which admitted, and the date and place of such admission.

30. Continued (Please see Attached)

Place	Date Mo/Yr	Successful	Admit Ys/N	Admit Ys/No

30. Bar Exam History:

In the spring of 1973 I signed up to take the California Bar Exam. Later, I became concerned at not having taken some of the specific subjects or, which they test, such as community property. At the time, I had graduated from law school and was working for the National Park Service. From my vantage point, New Mexico seemed a convenient place to find out what I knew about community property so I signed up for their exam at the same time. I passed neither - California because I wasn't there, and New Mexico because I knew little about community property or New Mexico law. But I got some experience. At the time I was not planning on practicing law, so it all seemed of little consequence.

Later, I do not know the dates, I signed up for a review course and took the California bar several times. Passed ethics, passed the multistate, but never could get a high enough score on all the essay subjects at the same time to pass. I went back to New York, got a job in an advertising agency, got married, and got to thinking about the bar there. To my recollection, I took it once to see what would happen, and the score was not too bad, so the next time I studied, came pretty close, then took a good review course and passed.

Sometime afterward, I started thinking about California. I did not want my application to lapse and risk having to file an involved long form all over again, so I signed up for it a few more times. Sometimes I did not take it, sometimes I did. Sometime I came close, sometimes I was in left field. Two years ago I scored a 1439 while needing a 1440 to pass.

Sometime in the 1980s, not thinking I would be living anywhere else but New York or California I threw out a voluminous pile of bar records. Several years later I got married and found myself being nudged into applying to the North Carolina Bar. At the time, the only thing reliable relating to dates that I could find was off my original New York bar admission papers. When I called up the Appellate Division as well as the California Bar Examiners to get some more date information, I was basically told by both that I was responsible for my own records.

So how many times have I signed up for the New York exam? Three to the best of my memory. As to dates I have no idea. The same is true for the California exam. Since I first signed up for it 17 years ago, to be on the safe side, I would have to guess I have signed up for it at least 15 or 16 times, and taken it maybe ten or twelve times more or less.

If information relating to this is critical to the North Carolina examiners, I invite you to make inquiry. I should point out that a copy of the new California long form that I recently filled out is attached, and that I likely will sit again for the exam this winter. Please let me know if this answer to this particular question is insufficient to satisfy your needs.

Board of Law Examiners of the State of North Carolina SEAL
FRED P. PARKER, III EXECUTIVE DIRECTOR
208 Fayetteville Street Mall
Raleigh, N.C. 27602 919/828/4886
December 19, 1991

Mr David Golia-Paladin
P.O. Box 66
Mineola, NY 11501

Mr. Thomas F. Loflin, III
123 Orange Street
Durham, NC 27702

Dear Mr. Golia-Paladin and Mr. Loflin:

This is in regard to David Golia-Paladin's comity application which is currently pending before the Board of Law Examiners. The following items are still missing or incomplete:

- Question #15(b) is not answered correctly.

- A complete address for R.H. Macy.

- Location of David Golia-Paladin's primary residence.

- Zip code for James Mahon.

- Biographical information on David Golia-Paladin's fingerprint cards. (See enclosed).

- Certificate of Good Standing - US District Court, Eastern District of NY.

- Question #30 is not answered.

- Copies of all documents relating to the Grievances filed against David Golia-Paladin.

- Complete address for the National Park Service. See Question #34.

Also, it is incumbent upon the applicant to provide the Board with the exact dates and locations for any bar examinations taken in other jurisdictions. Each jurisdiction should be written and the information requested.

David Golia-Paladin
Thomas F. Loflin, III
December 19, 1991

These matters should be taken care of as soon as possible.

Very truly yours,

/s/FRED PARKER
Fred Parker
Executive Director
cc: 109 Mimosa Drive
Chapel Hill, NC 27514

DAVID GOLIA PALADIN
ATTORNEY AT LAW
P.O. Box 66 225 Horton Highway
Mineola L.I. New York 11501
516-742-4699
919-493-4734

12/30/91
Committee of Bar Examiners
555 Franklin Street
P.O. Box 7908
San Francisco, California 94120

To Whom it may concern:

This is to request a list of dates and places I sat for the California bar, which I will be taking again this February under the name of DAVID ERNEST GOLIA-PALADIN.

Please reply directly to: Fred Parker III
Executive Secretary
Board of Law Examiners of the State of
North Carolina
P.O. Box 2946
208 Fayetteville Street Mall
Raleigh, North Carolina 27602

Very truly yours,
/s/DAVID GOLIA-PALADIN
David Golia-Paladin

[Above letter returned with following stamp and seal thereon]
Committee of Bar Examiner Seal

1/6/92 EXAMINATION HISTORY [Typed]
(Handwritten by California Bar as follows: MPRX 4/75-Pass 7/91, 2/91, 2/90, 7/89, 2/89, 7/88, 2/88, 2/87 ABS, 2/86, 2/84, 7/83 ABS, 7/82, 2/82, 7/81, 2/81, 2/80 ABS, 7/79, ABS, 2/79, 7/78, 7/75, 2/75, 7/74, 2/74, 7/73 ABS)

APPENDIX G

[Transcript Of Petitioner's Update of New York Civil Rights Case, October 22, 1992]

1 David Golia-Paladin Direct Vol. 1, p. 51
2 twenty (15-20) pages, and it's very vague.
3 In fact, all of these departments, the
4 so-called disciplinary committees have different
5 names.
6 In the first department, it's called the
7 attorney -- the Disciplinary Committee. In the
8 second department it's the Grievance Committee. I
9 think, in the third department it's the Committee
10 on Attorney Ethics and Standards, and I forgot what
11 the forth one is.
12 But it's spelled out in this lawsuit that I
13 filed in Federal Court.
14 Q Mr. Paladin, if I could summarize briefly the -
15 the written narration you provided in response to
16 question thirty-three "d", I believe, sometime in
17 the spring of 1988, you received a letter of
18 inquiry from the State Grievance Committee.
19 Ultimately, in October of 1988 there was a
20 letter of caution -
21 A (Interposing) Unh-hunh (yes).
22 Q -- from this grievance Committee alleging as its
23 grounds your supposed threatening of a client with
24 retaliation, if -- if he persued his grievance, -
25 A (Interposing) Yeah.

David Golia-Paladin Direct Vol. 1, p. 52

Q -- which I understand you -- you contest?
A Yes.
Q A second letter of caution, then, was issued sometime after October of 1988, grounded on your alleged failure to reregister with the Office of Court Administration, is that correct?
A The letter was issued, that was true, but the contents was not correct.
Q You, in fact, had reregistered with the -- the Office of Court Administration?
A Well, it -- it's -- it's under litigation. It's confusing to me in that the day before that letter was issued, I had a certificate of good standing issued by the Clerk of the Appellate Division in the second department that said that I had properly registered and paid my fees, and done all of that, and I submitted that to them, and they ignored it.
Q You've referred to certain litigation. Let me turn your and the Board's attention to an attachment to your attorney's letter, dated January 2nd of 1992, to the Board, which I believe we're considering as an amendment to your application, because it provided certain requested information.
A Yeah.

David Golia-Paladin Direct Vol. 1, p. 53

Q One of the -- the items was a copy of a, I believe, twenty-five (25), twenty-six (26) page complaint filed in the United States District Court for the

Southern District of New York.
The plaintiff is yourself. The defendants are -- are numerous and appear to be various judicial department officials.

A Can -- can I interrupt you for a second?

Q Certainly.

A I have a copy of that certificate of good standing here. It's dated at the bottom, December 8th, 1988, and it says clearly on it, let's see, "has duly taken and subscribed the oath of office prescribed by law, has been enrolled in the role of attorneys and counselors at law on file in my office, has duly registered with the Administrative Office of the Courts, and according to the records of this Court is in good standing as an attorney and counselor at law."

The Grievance Committee just completely ignored that.

Q I see.

And that's -- that's been included as part of your -

A (Interposing) I -

Q -- application and materials that are of record?

A I don't know if it has.

MR. LOFLIN: I think it has, but we can offer it again -

MR. MADDREY: (Interposing) Well, if - if you -

MR. LOFLIN: -- I think it has.
MR. MADDREY: -- if you want to offer it again we'll -- we'll wait until it's your time to present the evidence but -
MR. LOFLIN: (Interposing) All right.
MR. MADDREY: -- let's return for a moment, if we could, to the complaint filed, I believe, on October 31st of 1991 in the Southern District of New York by yourself, as plaintiff, against numerous judicial department officials.
A Yes.
Q (Mr. Maddrey) I believe this is a -- a class action lawsuit filed pursuant to Rule 23 of the Federal Rules of Civil Procedure, is that correct?
A Individual and class action, nothing's been certified at this point.
Q What is the -- the nature of the relief sought in

this complaint against the -- the various judicial department officials?
A I think they should have a uniform system in New York State.
As I said, each department has its own rules and they've got their own sanctions. And in -- in the second department, this particular file, or these -- these letters of caution are held on file, they're kept in your record at the Courthouse, and they're used in the future if anything comes up. In the third and the fourth department they're

expunged when a letter of caution or something else is issued.
And in fact, I think, in the fourth department, they have a -- a letter of education. They don't even -- they -- they have all kinds of different terms and different grades.

Q In your -- your complaint I believe you -- you seek as relief a mandatory injunction dismissing both letters of cuation against you, is that correct?

A That's correct.

Q In addition, you seek compensatory damages and attorneys fees against the Second Judicial Department personnel, -

David Golia-Paladin Direct Vol. 1, p. 56

A (Interposing) That would be very nice.

Q -- as well as a declaration that the various judicial department's attorney misconduct previsions are unconstitutional, is that part of the relief you seek in this -- this complaint?

A Whatever it says in there.

Q And additionally, you've -- you've requested a mandatory injunction requiring the formulation of a statewide attorney disciplinary authority, is that a further relief that you seek as a result of this?

A Yes.

Q What is the -- the current status of this action?

A The status of the action is when I spoke with the Attorney General in the springtime she indicated that she would go to the Grievance Committee and

discuss possible settlement if I would eliminate or drop from the case the first -- rather the First, Third, and Forth Judicial Departments.
I did that. She met with no success in dealing with the Grievance Committee.
She, then, filed a motion to dismiss for being improper venue because it was filed originally in the Southern District in Manhattan, because it was against the Second Judicial Department

David Golia-Paladin Direct Vol. 1, p. 57

personnel at that point. I opposed it and I asked the Judge Miriam Cedarbaum to transfer the case to the Eastern District, which she did, and presently it's pending in Uniondale.
My understanding is, it has been assigned to a magistrate -- actually, it was assigned to the Chief Judge of the Eastern District, and it's now been assigned to a magistrate for investigation. And the magistrate's docket is about six to eight months behind, so we haven't heard anything from them as far as scheduling a conference.

Q Do I understand correctly, then, that since the filing of this action on October 31st of 1991, there have been various other pleadings and -- and motions and orders filed in this case?

A There was a -- as I said, there was a motion by the Attorney General to dismiss, I think, for improper venue, and I opposed it, and as I said, it was sent to Uniondale in the Eastern District.

21 Q Did you prepare and file a document dismissing the
22 First, Third and Fourth Judicial Departments from
23 this action?
24 A Yeah, I did.
25 Q And have you -

1 David Golia-Paladin Direct Vol. 1, p. 58

2 A (Interposing) It was the -- the stipulation.
3 I don't have that here with me.
4 It was a -- it was, I think, a two-sentence
5 stipulation.
6 Q Have you provided a copy of that stipulation, or
7 any other subsequent documents to the complaint in
8 this action, to the Board of Law Examiners?
9 A I have not.
10 Q Mr. Paladin, let's return to the -- the subject, or
11 the issue of the active and substantial nature of
12 your practice of law during the relevant period.
I believe you have provided to the Board, as
14 part of your application, certain income tax forms
15 from tax years, 1985, '96, '87, '88, and '89
16 pursuant to a cover letter from an accountant,
17 Michael Rosedale?
18 A That's correct.
19 Q Are you familar with those documents?
20 A Yes.
21 Q And those are part of the record before us today?
22 A Yes.
23 Q In addition to these tax forms, I believe you've
24 previously provided for the Board's inspection
25 certain voucher sheets or other documentation of

APPENDIX H

[North Carolina Board Of Law Examiners Bar Application Question Number 6, All Permanent And Temporary Residences, February 12, 1991, And Residency Amendment, October, 22, 1992]

6. List below, every permanent and temporary residence you have ever had, including the present, in the United States or elsewhere, since your 21st birthday, with exact address of each, and the month and year of the beginning and ending of each such residence. (Exclude military address, unless off base.)

RESIDENCES
Current Address From Mo/Yr 4/85 - PRESENT
Address 109 MIMOSA DRIVE .
City CHAPEL HILL County ORANGE
State NC Zip 27514

From Mo/Yr 6/78 To Mo/Yr PRESENT

Address 225 HORTON HIGHWAY.
City MINEOLA County NASSAU
State NY Zip 11501

From Mo/Yr 6/75 To Mo/Yr 10/78

Address NONE
City MILL NECK County NASSAU
State NY Zip 11765

From Mo/Yr 5/75 To Mo/Yr 10/75

Address 33 BILTMORE BOULEVARD.
City MASSAPEQUA County NASSAU
State NY Zip 11758

Rev . 1976
Board of Law Examiners of the State of North Carolina
208 Fayetteville Street Mall
P.O.Box 2946
Raleigh, North Carolina 27602

SEAL

Amendment to Application

I, David Ernest Golia-Paladin, understand that my application for admission to the examination is a continuing application and for this reason amend my application with respect to Item(s) 6 (Residences), as follows:

From Mo/Yr 6/78 To Mo/Yr PRESENT (Except for the period from 12/17/87 to 3/14/88 [The amendment is the underlined phrase above.]

225 Horton Highway
City Mineola County Nassau
State NY Zip 11501
State of North Carolina
County of _____

H-2

David Ernest Golia-Paladin, being first duly sworn, says:

The foregoing information is complete and true of my own knowledge.

/s/DAVID GOLIA-PALADIN
David Golia-Paladin

Sworn to and subscribed before me this 22 day of October, 1992

/s/ROBERT J. CROWLEY
Robert J. Crowley
Notary Public
My Commission expires 12/5/93

APPENDIX I

[California Bar Examiners' Finding Of Petitioner's Good Moral Fitness, February 18, 1993]

SEAL

THE COMMITTEE OF BAR EXAMINERS OF THE STATE BAR OF CALIFORNIA OFFICE OF ADMISSIONS
555 FRANKLIN STREET SAN FRANCISCO, CALIFORNIA
(415) 561-8303
333 SOUTH BEAUDRY, 10th FLOOR
LOS ANGELES, CALIFORNIA 90017
(213) 580-5500

February 18, 1993

TO: DAVID ERNEST GOLIA-PALADIN
109 MIMOSA DR
CHAPEL HILL, NC 27514

FROM: THE COMMITTEE OF BAR EXAMINERS

SUBJECT DETERMINATION OF MORAL CHARACTER

APPLICATION FILED: September 28, 1992

DETERMINATION DATE February 16, 1993

DETERMINATION EXPIRES: February 16, 1995

The processing of your Application for Determination of Moral Character has been completed.

The Committee of Bar Examiners is pleased to advise you that you have been found to possess the good moral character required for certification to practice law in California. [Emphasis added] This positive determination will remain valid through the date specified. If you pass the Bar Examination and the Multistate Professional Responsibility Examination, your eligibility to practice law will be certified to the Supreme Court of California. If you do not pass the required examinations before your determination expires, you will be required to file an Application for Extension of Determination of Moral Character to prevent your determination from expiring.

If your determination expires, you will be required to file a NEW Application for Determination of Moral Character and pay the fee associate) with that application.

Until you are certified to the Supreme Court, you are under an on-going obligation to update your responses to questions on the moral character application whenever there is an addition or change to information previously provided to the Committee.

APPENDIX J

[Supreme Court Of North Carolina Decision Affirming Order of North Carolina Board Of Law Examiners Denying Petitioner Admission On Grounds Of Lack Of Good Moral Fitness, July 31, 1996]

Filed July 31, 1996
In the Office of Clerk
Supreme Court of North Carolina

IN THE SUPREME COURT OF NORTH CAROLINA
IN THE MATTER OF:
DAVID GOLIA-PALADIN, No. 61A96 - Wake
Appellant, Applicant to the
North Carolina Bar by Comity

Appeal of right pursuant to Section .1405 of the Rules Governing Admission to the Practice of Law in the State of North Carolina from an order of Bullock, J., entered 27 July 1995 in Superior Court, Wake County, which affirmed the 25 January 1993 Order of the Board Of Law Examiners denying the applicant's application for admission to the North Carolina Bar by comity. Heard in the Supreme Court 15 May 1996.

Loflin & Loflin, by Thomas F. Loflin III for applicant-appellant .

Michael F. Easley, Attorney General, by John F. Maddrey, Assistant Attorney General, for respondent-appellee The Board of Law Examiners of the State of North Carolina.

WHICHARD, Justice.

Applicant David Golia-Paladin, a 1973 graduate of Tulane School of Law, applied for admission to the North Carolina Bar by comity. He had been admitted to practice law in New York in 1978. A panel of the Board of Law Examiners of the State of North Carolina ("Board") denied the application on character and fitness grounds. Following applicant's unsuccessful appeal to the full Board, he appealed the Board's determination to Superior Court, Wake County. On 27 July 1995, the Honorable Stafford Bullock entered an order affirming the Board's 25 January 1993 order. Applicant appeals to this Court, assigning as error several of the Board's findings of fact and conclusions of law.

Having reviewed the entire record, we conclude that the Board's determination that applicant does not possess the requisite character and fitness to practice law in North Carolina was supported by competent evidence and is therefore affirmed.

The Board found as a fact that applicant failed to fully and completely disclose the number of times he had applied to take a bar examination in other states. Applicant had failed to disclose that he sat for the New Mexico Bar Examination in 1973 Further, although he had registered to take the California Bar Examination twenty-four times and had failed the examination eighteen times, applicant stated in his application that he had registered "at least fifteen or sixteen times" and actually took the examination "ten or twelve times more or less."

The Board additionally determined that applicant was named as the defendant in a civil action filed in December 1987 in New York. In that action, applicant was alleged to have allowed the cellar in his Mineola, New York, office to be used or occupied

as a living or sleeping area in violation of the zoning code. In an affidavit and answer, applicant disclaimed his use of the premises as a residence. However, this disclaimer was inconsistent with his response to question 6 on his North Carolina Bar application, which indicated that he had maintained a residence from June 1978 to the present at his New York address. Applicant subsequently amended his Bar application to state that he had not resided at the Mineola address from 17 December 1987 to 14 March 1988. The Board found that this amendment displayed a lack of candor. Because applicant had preexisting plans to spend the holidays in North Carolina, his departure from New York on 17 December 1987 did not interrupt or terminate his New York residency. Rather, applicant's actions amounted to a "convenient adoption of a temporary position for self-serving purposes in a legal matter rather than a genuine intention to terminate permanently his New York residence."

Finally, the Board determined that applicant had not provided copies of all relevant and material documents from a lawsuit in which he was a party. For all these reasons, the Board denied applicant's application for a license to practice law in North Carolina by comity. The trial court affirmed the Board's decision, concluding that the Board's findings of fact were supported by competent evidence and that its conclusions of law were supported by the findings of fact.

Applicant initially argues that he was given inadequate notice about the nature of the questions he was to be asked at his hearing before the Board. He asserts that the notice of hearing he received failed to apprise him of the possibility that he would be accused of misleading and failing to be candid with the Board. we further contends that the notice of hearing was inadequate because

it did not advise him in advance of "the specific statements the Board was alleging to be untruthful."

The notice of hearing provided that applicant had the burden of satisfying the Board that he had met all of the requirements of Section .0502 of the Rules Governing Admission to the Practice of Law ("Rules") in order to be licensed by comity. The notice further stated that applicant should "be advised that inquiry can also be made about the answers to any questions set out in the application." Therefore, applicant cannot assert that the Board failed to provide him with due process due to a purported inadequacy of notice concerning the matters addressed at his full Board hearing. This assignment of error is overruled.

Applicant next contests the Board's assertion that its 1986 determination that applicant had failed to demonstrate he possessed the character and fitness required for admission to the bar was upheld by this Court in In re Golia-Paladin, 327 N.C. 132, 393 S.E.2d 799 (1990). In its 25 January 1993 order, the Board noted that in 1986, it had found that applicant failed to prove (1) that he possessed the requisite character and fitness to be admitted to the practice of law in North Carolina, and (2) that he met the practice requirements for comity admission. The Board then noted that its 1986 order "denying the Applicant's 1985 comity admission application was ultimately affirmed on appeal." In affirming the Board's denial of applicant's admission, this Court specified that its decision was based solely on applicant's failure to demonstrate that he met the practice requirements for comity admission. Id . at 136, 393 S.E.2d. at 801. Contrary to applicant's assertion, nothing in the Board's statement in its 1993 order suggests that this Court upheld the Board's previous determination that applicant was of bad character. Even if the statement had so suggested, applicant has not

indicated to what relief he would be entitled. This assignment of error is overruled.

Applicant next contends that the Board erred in finding (1) that he "failed to fully disclose material matters" and "made numerous untruthful statements" about the number of times he sat for various bar examinations, and (2) that these statements had the effect of misleading and deceiving the Board. In his application for admission to the North Carolina Bar, applicant stated the number of times he had registered for and taken the California Bar Examination:

> Since I first signed up for it 17 years ago, to be on the safe side, I would have to guess I have signed up for it at least 15 or 16 times, and taken it maybe ten or twelve times more or less.

At applicant's request, the California Bar notified the Board that applicant had actually registered for the California Bar Examination on twenty-four occasions and sat for the examination eighteen times. Thus, applicant contends, the Board was fully apprised of the number of times he had registered for and taken the California examination, and his statements neither misled nor deceived the Board. Applicant additionally contends that the Board incorrectly determined that he lied in 1986 when he was asked when he had taken his first bar examination. Applicant had responded, "I sat in California, I think it was, I'm not sure, '74 or '75." He corrected this answer in his present application by disclosing that he sat for the New Mexico Bar Examination in 1973. When reviewing decisions of the Board of Law Examiners,

this Court employs the whole record test. In re Legg, 325 N.C. 658, 669, 386 S.E.2d 174, 180 (1989), cert. denied, 496 U.S. 906, 110 L. Ed. 2d 270 (1990). Under this test, there must be substantial evidence supporting the Board's findings of fact and conclusions of law. Id. "Substantial evidence" has been defined as relevant evidence which a reasonable mind, not necessarily our own, could accept as adequate to support a conclusion. In re Moore, 308 N.C. 771, 779, 303 S.E.2d 810, 815-16 (1983). Where an applicant fails to provide full and complete information on his bar examination application, the Board must first determine whether the applicant made these omissions purposefully. If the Board determines that the omissions were purposeful, it must then decide whether the omissions "'so reflect on the applicant's character that they are sufficient to rebut his prima facie showing of good character.'" Legg, 325 N.C. at 672, 386 S.E.2d at 182 (quoting In re Moore, 301 N.C. 634, 641, 272 S.E.2d 826, 831 (1981)). Here, the Board determined that applicant's omissions evidenced a lack of fairness and candor in dealing with the Board. This determination was reasonable based on the evidence. Applicant is an attorney who had previously applied for admission to the North Carolina Bar by comity and was thus familiar with the application process and the need for accuracy and thoroughness in his responses. In his answer to question 30 concerning his bar examination history, applicant stated:

> So how many times have I signed up for the New York exam? Three to the best of my memory. As to dates I have no idea. The same is true for the California exam. . . . If information relating to this is critical to the North Carolina examiners, I invite you to make inquiry.

Applicant's cavalier attitude toward gathering the information it was his duty to supply to the Board constitutes additional evidence from which the Board could conclude that his misstatements and omissions were purposeful. Such misstatements and omissions are relevant to applicant's fitness to practice law in North Carolina, for "[a]n applicant who fails to exhibit care in the submission of a document essential to his admission to the practice of his chosen career is unlikely to exhibit any greater degree of care during the course of client representations." Id. at 673, 386 S.E.2d at 183. This assignment of error is overruled.

Applicant next assigns as error the Board's determination that he willfully failed to provide to the Board material documents concerning a class action lawsuit applicant brought against the New York State Grievance Committee and its members. At the time he submitted his North Carolina Bar application, applicant listed, in response to question 17, all lawsuits in which he had been a party. Following the institution of his lawsuit against the Grievance Committee, applicant supplemented his response to question 17. However, applicant submitted to the Board only the complaint in that action; he did not provide copies of the defendants' motion to dismiss for improper venue, or the stipulation between applicant and the New York Office of the Attorney General that certain parties be dropped from the lawsuit, or the court order transferring the case from the United States District Court for the Southern District of New York to the Eastern District. Applicant contends that his complaint was the only pleading of substance in the case and that the other matters in no way reflect upon his character or fitness to practice law.

As noted above, it is for the Board to determine whether an applicant's omission from his bar application is purposeful and, if

so, whether that omission is sufficiently substantial to rebut the applicant's prima facie showing of good character. Applicant's failure to disclose additional documents relating to his federal court litigation falls squarely within Section .0603 of the Rules, which provides that no one shall be licensed to practice law in North Carolina

> who fails to disclose fully to the board, whether requested to do so or not, any and all facts relating to any civil or criminal proceedings, charges or investigations involving the applicant, whether the same have been terminated or not in this or any other state or in any of the federal courts or other jurisdictions.

The Board properly relied upon applicant's failure to supply the Board with copies of the proceedings in his federal litigation as a basis for denying applicant a license to practice law. This assignment of error is overruled.

Applicant next disputes the Board's conclusion of law that his denial of the charge that he resided in the basement of his New York office displayed "a lack of fairness and candor with the Court and had a tendency to deceive." Because the complaint in that action stated that applicant "uses or permits the use of" the cellar as living quarters, yet applicant did not reside there at the time he received the complaint, applicant argues that he had a right to deny that allegation and that such denial in fact amounted to "good lawyering."

Residency is a material issue in a comity application to the North Carolina Bar because the Rules require that an applicant prove an active and substantial legal practice while he or she is

physically present in a state having reciprocity with North Carolina. It was thus in applicant's best interest to represent to the Board that he had continuously maintained a New York residence. However, when he was sued by the Village of Mineola for violating the zoning ordinance, applicant denied that he used his New York property as a residence and subsequently amended his North Carolina Bar application to avoid the appearance of a conflict. The Board specifically rejected applicant's argument that his denial of the Village's charges and his quibbling over verb tenses represented "good lawyering." As the Board had the opportunity to observe applicant's demeanor during the hearing and its conclusion appears reasonable from the evidence, that conclusion must stand. See Moore, 308 N.C. at 780-81, 303 S.E.2d at 816. This assignment of error is overruled.

In his final assignment of error, applicant contends that in defending himself against the Village of Mineola, he was permitted to "assert a temporary position in order to improve his chances of winning a suit where the position asserted [was] not illegal." Further, because he has not committed any criminal offenses and because the Board's order did not specify which provisions of the Code of Professional Responsibility applicant violated, applicant argues that this Court should reverse the Board and direct it to grant applicant a comity license.

This Court has held that while an applicant's conversion of funds owed to a private investigator "did not necessarily rise to the level of a criminal offense or civil liability, such an evidentiary showing is not necessary in a Board proceeding to determine an applicant's moral fitness to practice law in North Carolina." Legg, 325 N.C. at 670, 386 S.E.2d at 181. Material false statements can be sufficient to show that an applicant lacks the requisite character

and general fitness for admission to the practice of law. Id . at 672, 386 S.E.2d at 182. Here, the Board determined that applicant's statements regarding his New York residency were untruthful and misleading and had a significant bearing upon his character and fitness. The Board, as an instrument of the State, has "wide freedom to gauge on a case-by-case basis the fitness of an applicant to practice law," In re Griffiths, 413 U.S. 717, 725, 37 L. Ed. 2d 910, 917 (1973), and nothing in the record indicates that the Board's decision resulted from an arbitrary, capricious, or erroneous performance of its duties.

For the foregoing reasons, we affirm the Order of the Superior Court, Wake County, which affirmed the Board's 25 January 1993 decision denying applicant's application for admission to the North Carolina Bar by comity.

AFFIRMED.

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